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ABSTRACT

This policy manual presents the state of Nebraska's regulations and standards for special education programs that are effective April 23, 1996. The regulations include a declaration of responsibility, provide the statutory authority, and address the following areas: (1) definitions of disabilities and other relevant terms; (2) responsibility for special education programs, including participation by nonpublic school children, and program standards reviews; (3) establishment and administration of special education, including early intervention; (4) identification of children with disabilities, multidisciplinary education team requirements, and eligibility for special education; (5) individualized education programs, individualized family service plans, and parent participation; (6) placement of children with disabilities and suspension and expulsion of students with disabilities; (7) procedural safeguards, including accessibility and confidentiality of records, procedural timelines, parental notice, parental consent, and complaint procedures; (8) qualifications for special education personnel; (9) school district budget process for school age programs; (10) school district budget process for early childhood special education programs; (11) contracted programs; and (12) special education transportation, including transportation for nonresident high school students. (TD)

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NEBRASKA DEPARTMENT
OF EDUCATION

RULE 51

REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 51

EFFECTIVE DATE
April 23, 1996

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001 Declaration of Responsibility

Neb. Rev. Stat. 79-3320 declares, "it shall be the duty of the board of education of every school district to provide or contract for special education programs for all resident children who could benefit from such programs."

002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Department of Education in Neb. Rev. Stat. 79-3348 which declares, "The State Department of Education shall adopt, promulgate and publish such rules and regulations as shall be necessary to carry out the "Special Education Act."

003 Definition of Terms

003.01 Adjusted average per pupil cost of the preceding year shall mean the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year and the computation shall be subject to audit by appropriate state agencies. (See 92 NAC 51-011.)

003.02 Agency contracting for services coordination shall mean the agency identified by each regional interagency planning team which assumes the responsibility to deliver the entitlement of services coordination in the region through a contract with the Department of Social Services.

003.03 Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

003.04 Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability; selecting designing, fitting, customizing, adapting, applying, retaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the individual with a disability.

003.05 Below age five shall mean those children who have not reached their fifth birthday on or before October 15 of the current school year.

003.06 Caseload shall mean the number of students with verified disabilities served by any one professional staff member at a point in time.

003.07 Categorical program shall mean a special education program setting in which services are provided to children with the same disability.

003.08 Children with disabilities shall mean those children who have been verified by a multidisciplinary evaluation team as per 92 NAC 51-006 as children with autism, behavior disorders, deaf-blindness, hearing impairments, mental handicaps, multiple disabilities, orthopedic impairments, other health impairments, specific learning disabilities, speech-language impairments, traumatic brain injury or visual impairments, who because of these impairments need special education and related services. The terms used in this definition are defined as follows:

003.08A Autism shall mean a developmental disability which significantly affects verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability category "behavioral disorder."

003.08B Behavioral disorders shall mean:

003.08B1 A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects the child's educational performance or, in the case of children below age five, development;

003.08B1a An inability to learn which cannot be explained by intellectual, sensory, or health factors;

003.08B1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

003.08B1c Inappropriate types of behavior or feelings under normal circumstances;

003.08B1d A general pervasive mood of unhappiness or depression; or

003.08B1e A tendency to develop physical symptoms or fears associated with personal or school problems.

003.08B2 The term includes children with schizophrenia. The term does not include children with social maladjustments, unless it is determined that they have behavioral disorders. This term parallels the federal definition of seriously emotionally disturbed.

003.08C Deaf-blindness shall mean concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or blindness.

003.08D Hearing impairments shall mean a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects development or educational performance. Hearing impairments shall also mean a hearing impairment, whether permanent or fluctuating, which adversely affects a child's development or educational performance. This term parallels the state and federal definitions of hearing impairments including deafness.

003.08E Mental handicap shall mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's development or educational performance.

003.08F Multiple disabilities shall mean concomitant impairments (such as mental handicap-visual impairment, mental handicap-orthopedic impairment, etc., the combination of which causes such severe developmental or educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.

003.08G Orthopedic impairments shall mean a severe orthopedic impairment which adversely affects a child's development or educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

003.08H Other health impairments shall mean:

003.08H1 Having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's development or educational performance.

003.08I Specific learning disability shall mean a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities; of mental handicaps; of behavioral disorders; or of environmental, cultural, or economic disadvantage.

003.08J Speech-language impairments shall mean a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's development or educational performance.

003.08K Traumatic brain injury shall mean an injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

003.08L Visual impairment shall mean a visual impairment which, even with correction, adversely affects a child's development or educational performance. The term includes both partially seeing and blind.

003.09 Complaint shall mean a written statement, submitted to the Department of Education, Special Education Office, alleging a specific violation of state and federal rules and regulations by a school district or service agency.

003.10 Consent shall mean that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the parent understands and agrees in writing to the proposed activity; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released and the parent understands that the granting of consent is voluntary and may be revoked at any time.

003.11 Cooperative shall mean two or more school districts or an Educational Service Unit approved by the Department of Education to jointly perform special education functions, including receipt of special education payments.

003.12 Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

003.13 Developmental delay for infants and toddlers shall mean any of the disability classifications or conditions specified in 92 NAC 51-006.

003.14 Early childhood special education (ECSE) programs shall mean special education programs and related services designed to serve children with verified disabilities below age five.

003.15 Education records means those records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Rights and Privacy Act of 1974.

003.16 Evaluation shall mean procedures used to assist in the determination of whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

003.17 Excess cost shall mean the difference between: (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of students (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the resident school district of each child for the preceding year.

003.18 Free appropriate public education shall mean special education and related services which are provided at public expense, under public supervision and direction, at no cost to parents and in conformity with an individual education program or individualized family service plan which meets the requirements of 92 NAC 51-007, which meets the standards of the state, including the requirements of this rule and includes birth to age five, elementary or secondary school education.

003.19 Full time equivalency (FTE) shall mean the amount of time an individual staff member spends in his or her position assignment as it relates to the total time in the work week defined for that position by each district.

003.20 Independent educational evaluation shall mean an evaluation conducted by a qualified professional who is not employed by the school district responsible for the education of the child in question.

003.21 Individual education program (IEP) shall mean a written statement for a child with verified disabilities that is developed and implemented in accordance with 92 NAC 51-007.

003.22 Individual Family Service Plan (IFSP) shall mean a written plan for providing early intervention services to a child with a disability age birth through age two and the child's family that is developed and implemented in accordance with 92 NAC 51-007.

003.23 Infant or toddler with disabilities shall mean a child, two years of age or younger, who experiences developmental delays in one of the following areas: cognitive development, physical development (including vision and hearing); communication development; social or emotional development; or adaptive development. Toddlers who reach age three during the school year shall remain eligible throughout that school year.

003.24 Level I special education support services shall mean special education services provided to students who require an aggregate of not more than three (3) hours of such services per week. Level I special education support services may be provided for or contracted for and shall include all administrative, diagnostic, consultative, and vocational adjustment counselor services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a student each week.

003.25 Level I and Level II Combination Special Education Services shall mean those special education programs which serve both Level I and Level II students in a combined program.

003.26 Level II Special Education Services shall mean those special education and related services which are provided outside of the regular class program for a period of time exceeding an aggregate of three hours per week.

003.27 Level III Special Education Contractual Services shall mean those special education and related services provided in an educational setting not operated by the resident school district whose rates are approved by the Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.

003.28 Life support equipment shall mean equipment used to maintain or sustain life functions.

003.29 Multicategorical program shall mean a special education program setting which provides services to any combination of categories of students with disabilities.

003.30 Multidisciplinary evaluation team (MDT) shall mean a group of persons whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the eligibility criteria in 92 NAC 51-006.

003.31 Notice shall mean written information provided to the parent of a child with disabilities before the school district proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

003.32 Paraeducator shall mean an individual who serves under the supervision of a certificated or licensed staff member as an assistant in the educational process or residential care staff under the supervision of certificated staff and defined in 92 NAC 51-010.

003.33 Parent shall mean a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed for a child with disabilities. The term does not include the state if the child is a ward of the state.

003.34 Person acting as a parent shall mean a person acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

003.35 Personal equipment and supplies shall mean items necessary for daily life activities occurring outside the requirement of the IEP or IFSP which are generally expected to be the responsibility of parents.

003.36 Personally identifiable means that information includes the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or student number, or a list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

003.37 Program variance shall mean the discrepancy that exists when the number of children assigned to professional staff member deviates from the approved number of children stated in 92 NAC 51-005.

003.38 Referral shall mean the submission of a request for an individual evaluation of a child suspected of having a disability.

003.39 Related services shall mean transportation and such corrective developmental, and other supportive services as required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

003.40 Residential care shall mean food and lodging and any other related expenses which are not part of the education program, but such care shall not include expenditures for medical or dental services. (See 92 NAC 53.)

003.41 School age programs shall mean special education programs and related services designed to serve children with verified disabilities from age five to age twenty-one. Children who have reached their fifth birthday prior to October 15 shall be considered school age.

003.42 Service agency shall mean the school district, educational service unit, local or regional office of mental retardation or some combination thereof, or such other agency approved by the Department of Education as may provide a special education program including an institution not wholly owned or controlled by the state or a political subdivision.

003.43 Services coordination shall mean a flexible, individualized process of interaction facilitated by a services coordinator to assist a family of an eligible infant or toddler with disabilities within a community to identify and meet the child's and family's needs through coordination of informal and formal supports.

003.44 Service provider shall mean an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Department of Education.

003.45 Special education shall mean specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions. The term includes speech pathology, occupational therapy and physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

003.46 Student assistance team (SAT) shall mean a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

003.47 Surrogate parent shall mean an individual appointed by the school district to act in place of a parent in safeguarding a child's rights in the special education decision making process.

003.48 Transition services means a coordinated set of activities for a student, beginning no later than age 16 or younger, if appropriate, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing or adult education, adult services, independent living, or community participation.

003.49 Ward of any court shall mean any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.

003.50 Ward of the state shall mean any minor child who, by virtue of a court order, entered by a court of competent jurisdiction, has been adjudicated to be a ward of the state.

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Department of Education for the purpose of meeting the standards of 92 NAC 51. School districts shall insure that all children with verified disabilities, from date of diagnosis to age twenty-one, have available to them a free appropriate public education which includes special education and related services to meet their unique needs.

004.02 Each school district shall demonstrate participation in a plan of services for children with verified disabilities from date of diagnosis to age five. Such plans shall be prepared on a regional basis as determined by the Department of Education.

004.03 Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

004.04 Participation by Nonpublic School Children

004.04A Each school district shall provide resident nonpublic school children with verified disabilities with a genuine opportunity for equitable participation in special education and related services.

004.04A1 The school district shall provide that opportunity to participate in a manner that is consistent with the number of eligible nonpublic school children with disabilities and their needs.

004.04A2 The school district shall maintain continuing administrative direction and control over funds and property that benefit children enrolled in nonpublic schools.

004.04B A school district shall consult with appropriate representatives of children with disabilities enrolled in nonpublic schools during all phases of the development and design of the special education program, including consideration of:

004.04B1 Which children will receive benefits under the special education program;

004.04B2 How the childrens' needs will be identified;

004.04B3 What benefits will be provided;

004.04B4 How the benefits will be provided; and

004.04B5 How the special education program will be evaluated.

004.04C A school district may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. 79-3320 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

004.04D A school district shall consult with appropriate representatives of children enrolled in nonpublic schools before the school district makes any decision that affects the opportunities of those children to participate in the special education program.

004.04D1 A school district shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

004.04E The program benefits that a school district provides for children enrolled in nonpublic schools must be comparable in quality, scope and opportunity for participation to the program benefits that the school district provides for children enrolled in public schools.

004.04F If a school district uses funds under a program for public school children in a particular attendance area, or grade or age level, the school district shall insure equitable opportunities for participation by children enrolled in nonpublic schools who:

004.04F1 Have the same needs as the public school children to be served; and

004.04F2 Are in that group, attendance area, or age or grade level.

004.04G If the needs of children with disabilities enrolled in nonpublic schools are different from the needs of children with disabilities enrolled in public schools, the school district shall provide program benefits for the nonpublic school children that are different from the benefits the school district provides for the public school children.

004.04H A school district shall spend the same average amount of program funds on:

004.04H1 A child enrolled in a nonpublic school who receives benefits under the program; and

004.04H2 A child enrolled in a public school who receives benefits under the program.

004.04I A school district shall spend a different average amount on program benefits for children enrolled in nonpublic schools if the average cost of meeting the needs of those children is different from the average cost of meeting the needs of children enrolled in public schools.

004.04J Determination of those needs, the number to be served, and the types of services to be afforded nonpublic school children must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing services to children with verified disabilities enrolled in public schools.

004.04K A school district may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

004.04K1 The classes are at the same site; and

004.04K2 The classes include children enrolled in public schools and children enrolled in nonpublic schools.

004.04L A school district may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

004.04L1 A school district shall use the special education funds to meet the specific needs of children enrolled in nonpublic schools, rather than:

004.04L1a The needs of a nonpublic school; or

004.04L1b The general needs of the children enrolled in a nonpublic school.

004.04M A school district may use special education funds to make public personnel available in other than public facilities:

004.04M1 To the extent necessary to provide equitable program benefits designed for students enrolled in a nonpublic school;

004.04M2 If those benefits are not normally provided by the nonpublic school.

004.04N A school district may use special education funds to pay for the services of an employee of the nonpublic school if:

004.04N1 The employee performs the services outside of his or her regular hours of duty; and

004.04N2 The employee performs the services under pubiic supervision and control.

004.04O A school district may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

004.04O1 The school district shall insure that the equipment or supplies placed in a nonpublic school:

004.04O1a Are used only for the purpose of providing special education and related services; and

004.04O1b Can be removed from the nonpublic school without remodeling the nonpublic school facilities.

004.04O2 The school district shall remove equipment or supplies from a nonpublic school if:

004.04O2a The equipment or supplies are no longer needed for the purpose of providing special education and related services; or

004.04O2b Removal is necessary to avoid use of the equipment or supplies for other than special education purposes.

004.04P A school district shall insure that special education funds are not used for the construction of nonpublic school facilities.

004.04Q If a child with a disability has available a free appropriate public education and the parents choose to place the child in a nonpublic school or facility, the school district is not required to pay for the child's education at the nonpublic school or facility. However, the school district must make services available to the child as provided under 92 NAC 51-004.04. Disagreements between a parent and a school district regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under 92 NAC 55.

004.05 Responsibility for Children Residing in Class I Districts not Part of a Class VI District

004.05A The County Superintendent shall fulfill all school district responsibilities as set forth in this Rule for high school age students with disabilities.

004.06 Reporting of Information Regarding Children with Disabilities

004.06A Individual child information shall be reported to NDE on forms prescribed by the Department of Education or on a magnetic tape or diskette. Each school district shall maintain and report the following information for children with verified disabilities receiving services according to an individual education program:

004.06A1 Name (or identifier approved by NDE) and birthdate;

004.06A2 County and district of legal residence;

004.06A3 Program attended;

004.06A4 Type(s) of disability;

004.06A5 Type(s) of service received;

004.06A6 Indication of time spent in special education service; and

004.06A7 Reason for exiting special education.

004.06B This data shall be updated at least annually to reflect change(s) in the above information (004.06A1-004.06A7).

004.06C School districts, county superintendents and approved service providers shall confirm their total child count as of December 1 of each year. The December 1 child count confirmation must be postmarked or hand delivered to the NDE on or before December 10 of each year. For penalty provisions for late submission of required forms, see 92 NAC 51-011.04E3 through 011.04E6.

004.07 A school district shall submit a single district plan, participate in a plan submitted by a cooperative approved by the Department of Education, or any combination thereof. The State Board of Education shall approve or disapprove cooperatives for direct receipt of payment based on the following criteria:

004.07A The cooperative must be administered by a school district or an Educational Service Unit;

004.07B The participating school districts have certified that the cooperative is authorized to receive special education payments due the districts;

004:07C The cooperative provides evidence of agreements and procedures which provide for long term operation;

004.07D The cooperative proposes to operate programs which can be expected to increase program and financial efficiency and effectiveness; and

004.07E The cooperative provides evidence that the proportionate financial share as determined by the provisions of 92 NAC 51-011 and 92 NAC 51-012 of each participating school district can be determined and documented.

004.08 School District Special Education Policies and Procedures

004.08A The school district shall develop, adopt and upon request submit to the Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individual education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district.

004.09 Program Standards Reviews

004.09A All special education programs shall participate in a review no less than triennially conducted by the Department of Education.

004.09B Failure to comply with the provisions of state and federal statute and administrative rules concerning education of children with disabilities shall result in notification of school districts of the specific program deficiencies by the Department of Education.

004.09C School districts shall be afforded 45 days to respond to the initial notification with a report of the resolution of the deficiencies or a plan for resolution.

004.09D School districts failing to respond as set forth in 92 NAC 51-004.09C shall be afforded an additional 30 days following contact from the Administrator of the Special Education Office or the designee of the Administrator to correct the deficiencies.

004.09E Deficiencies not corrected according to the timelines set forth in 92 NAC 51-004.09 shall be subject to the procedures outlined in 92 NAC 51-004.10.

004.09F The members of the board of education of any school district not offering special education programs acceptable to the State Board of Education shall be in violation of the law. No state funds shall be paid to any school district as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district.

004.10 Provisions for Notice and Opportunity for Hearing

004.10A A school district or an approved cooperative shall be notified by certified mail to the head administrator whenever the Special Education Office intends to recommend to the State Board of Education that a penalty be assessed against the school district or approved cooperative.

004.10B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the Special Education Office's intention to recommend a penalty to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

004.10B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that the school district or approved cooperative be assessed a penalty, or

004.10B2 Notify the school district or approved cooperative that no penalty shall be assessed.

004.10C Within 30 calendar days of receipt of the notice of the Commissioner's intention to recommend a penalty. The school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.

004.11 Notice and Opportunity for a Hearing Before Disapproval of an Application for Special Education Funds

004.11A The Nebraska Department of Education will provide an opportunity for a hearing prior to disapproving an application for special education funds for failure of the application to meet the requirements of the Individuals with Disabilities Education Act and its implementing regulations.

004.11B The school district or approved cooperative shall request a hearing in writing within 30 calendar days of receipt of the notice provided indicating that the Special Education Office intends to recommend disapproval of the school district's or approved cooperative's application. Within 30 days after it receives a request, the Department of Education shall hold a hearing on the record and shall review its decision.

004.11C Not later than 10 days after the hearing, the Nebraska Department of Education shall issue a written ruling, including the findings of fact and reasons for the ruling.

004.11D If the Nebraska Department of Education finds the proposed disapproval of the school district's or approved cooperative application was contrary to the Individual with Disabilities Education Act and its implementing regulations or the Nebraska Special Education Act and its implementing regulations, the Department shall approve the application.

004.11E If the Nebraska Department of Education disapproves the school district or approved cooperative's application, the school district or approved cooperative may appeal to the U.S. Secretary of Education. The school district or approved cooperative shall file a notice for appeal within 20 days after the school district or approved cooperative has been notified by the Nebraska Department of Education of the results of the hearing. If supported by substantial evidence, the findings of the Nebraska Department of Education shall be final.

004.11F The Nebraska Department of Education will make available at reasonable times and places all records of the Department pertaining to any review or appeal the school district or approved cooperative is conducting under 34 CFR 76.401 including records of other school districts or approved cooperatives.

004.12 Children with Disabilities who are Wards of the State or Court

004.12A Responsibility for the provision of a free appropriate public education remains with the school district in which the ward of the state or court resides. (For reimbursement for costs for state wards see 92 NAC 51-011 and 012.)

004.13 Special Requirements

004.13A Each school district shall insure that the hearing aids worn in school by children who are deaf or have hearing impairments are functioning properly.

004.13B Each school district shall take steps to insure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

004.13C Physical education services, specially designed if necessary, must be available to every child with a verified disability receiving a free appropriate public education.

004.13C1 Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to children without disabilities unless:

004.13C1a The child is enrolled full time in a separate facility; or

004.13C1b The child needs specially designed physical education as prescribed in the child's individualized education program.

004.13C2 If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

004.13C3 The school district responsible for the education of a child with a verified disability who is enrolled in a separate facility shall insure that the child receives appropriate physical education services.

004.13D Each school district shall comply with any federal health or safety requirements that apply to the facilities that the school district uses to provide a free appropriate public education for children with verified disabilities.

004.13E Each school district shall administer or supervise the administration of all educational programs for children with verified disabilities.

004.13F Each school district shall insure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003 are made available to any child with a disability who requires an assistive technology device or service in order to receive a free appropriate public education.

004.13F1 Assistive technology devices and assistive technology services for children with disabilities may be provided as special education, related services, or in the case of children with disabilities to be educated in regular classes, as supplementary aids and services.

004.14 Innovative Educational Projects

004.14A School districts and approved cooperatives wishing to conduct innovative educational projects for the purpose of improving instruction or increasing educational opportunities for children with disabilities that would result in deviating from the standards in this Chapter, shall submit a detailed written plan to the Commissioner of Education.

004.14A1 The length of the project must be specified in the plan, not to exceed three years and must provide for an annual review of the progress of the program.

004.14A2 If the submitted project requires a waiver of any of the provisions of 92 NAC 51 which are not required by State statute and Federal law or regulation the Commissioner shall submit the plan to the Board with his or her recommendations.

004.14A3 The Board may approve the requested plan if the plan demonstrates that it promotes quality learning, equity, accountability and that the Commissioner of Education will be informed annually of the progress and the project results.

004.14A4 The Board shall reject the plan if, in its opinion, the plan would not promote quality learning, equity, accountability or if it does not provide that the Commissioner of Education will be informed annually of the progress of the plan. The Board shall also reject the plan if, in the Board's opinion, the plan results in a deviation of standards contained in this chapter which are specifically required by statute or federal law or regulation.

005 Establishment and Administration of Special Education

005.01 School districts shall assign priority in program implementation, first, to children with disabilities birth to 21, who are not receiving an education, and second, to children with disabilities within each handicapping condition with the most severe disabilities who are receiving some but not all of the special education and related services specified in the student's Individualized Education Program.

005.02 Early Childhood Special Education Services (ECSE)

005.02A The caseload for both home-based and center-based programs shall range from 8-20 children per full time teaching staff member.

005.02A1 In a center-based program, the maximum number of children with disabilities below age five served together at any one time by one staff member shall be as follows:

005.02A1a Children birth to 18 months -- 4 children

005.02A1b Children 18 months to 3 years -- 6 children

005.02A1c Children 3 to 5 years -- 10 children

005.02A2 Home-based Programs

005.02A2a Children birth to 5 years -- 10 to 15 children

005.02A3 Early Childhood Settings Serving Children Who Are Not Disabled

005.02A3a In an early childhood setting serving primarily children without disabilities, the enrollment of children with disabilities shall be limited to 20 percent of the total program enrollment.

005.02A4 The total number of children birth to age five served per full time speech-language pathologist shall be consistent with the Level I and Level II school age caseloads as designated in 92 NAC 51-005.03A1j and 92 NAC 51-005.04A1l.

005.03 Level I Special Education Support Services

005.03A The total number of school age students served by Level I personnel per school year per full time professional staff member shall fall within the following ranges:

005.03A1 Level I Categorical Programs

005.03A1a Students with Autism -- 15-25

005.03A1b Students with Behavioral Disorders -- 25-35

005.03A1c Students with Hearing Impairments -- 15-25

005.03A1d Students with a Mental Handicap: Mild -- 25-35

005.03A1e Students requiring Occupational Therapy – 30-50

005.03A1f Students with Orthopedic Impairments – 30-50

005.03A1g Students with Other Health Impairments – 30-50

005.03A1h Students requiring Physical Therapy – 30-50

005.03A1i Students with Specific Learning Disabilities – 25-35

005.03A1j Students with Speech-Language Impairments – 40-60

005.03A1k Students with Traumatic Brain Injury – 15-25

005.03A1l Students with Visual Impairments – 15-25

005.03A2 Level I Multicategorical Programs – 15-25 students with any combination of disabilities.

005.04 Level II Special Education Services

005.04A The total number of students served in Level II Classrooms per school year per full time professional staff member shall fall within the following ranges:

005.04A1 Level II Categorical Programs

005.04A1a Students with Autism – 4-8

005.04A1b Students with Behavior Disorders – 6-12

005.04A1c Students with Deaf-Blindness – 4-8

005.04A1d Students with Hearing Impairments – 6-12

005.04A1e Students with a Mental Handicap: Mild – 12-20

005.04A1f Students with a Mental Handicap: Moderate – 8-12

005.04A1g Students with a Mental Handicap: Severe/Profound – 4-8

005.04A1h Students with Multiple Disabilities: – 4-8

005.04A1i Students with Orthopedic Impairments – 6-12

005.04A1j Students with Other Health Impairments – 6-12

005.04A1k Students with Specific Learning Disabilities – 12-20

005.04A1l Students with Speech-Language Impairments – 12-20

005.04A1m Students with Traumatic Brain Injury – 4-8

005.04A1n Students with Visual Impairments – 6-12

005.04A2 Level II Multicategorical Programs -- 4-20 students with any combination of handicapping conditions.

005.04B Level I and Level II Combination Programs

Programs which serve both Level I and Level II students may be operated. The caseload for such a combined program shall range from 15-25 students per school year per full time professional staff member. Students with disabilities receiving an aggregate of less than three hours of special education service per week shall be considered Level I students for purposes of reimbursement computation.

005.05 Utilization of special education paraeducators in instructional settings shall include:

005.05A The development and maintenance by the district of written procedures regarding special education paraeducators that reflect their: job description, preservice and inservice training, supervision and evaluation.

005.05B A paraeducator shall not teach, as defined in Neb. Rev. Stat. 79-1233.

005.06 Caseload Reporting

005.06A School districts, approved cooperatives, or educational service units shall report caseloads as of December 1 for all persons having caseload requirements as per 92 NAC 51-005. Special education caseload reports shall be submitted as part of the NDE Curriculum Report.

005.06B In addition to the December 1 report, districts or educational service units may submit an updated supplemental caseload report on an additional date(s) if the additional date is more representative of the actual caseloads within the district. The supplemental report must be postmarked or hand delivered to the Nebraska Department of Education on or before June 1.

005.06C School districts, approved cooperatives or educational service units whose caseloads vary from the approved range in 92 NAC 51-005 may request a variance. Requests for variance must be based on availability of cooperative programming with other districts, consideration of serving children as close to home as possible, and problems of geographic location. The Nebraska Department of Education will annually approve or disapprove the request for variance and will notify the school district, approved cooperative or educational service unit. Requests for variances which are not approved shall be subject to the procedures outlined in 92 NAC 51-004.10. School districts, approved cooperatives and educational service units will be subject to proration of special education reimbursement by the Nebraska Department of Education if the variance request was not submitted or not approved. Requests for variance must be postmarked or hand delivered to the Nebraska Department of Education on or before June 1.

005.07 Early Childhood Special Education Programs Annual Meeting Requirement and Plan for Services

005.07A Each Early Childhood Special Education Program will participate in an Annual Meeting and participate in the development of a regional plan of service, birth to age five, which shall:

005.07A1 Provide a basis for communication and problem solving among school districts, parents, health, social service, Head Start and nonpublic agencies serving children below age five and their families;

005.07A2 Establish a mechanism for collaborative program development;

005.07A3 Conduct an Annual Meeting prior to July 1 of each year;

005.07A3a The date and place of the Annual Meeting shall be disseminated within the region so that all school districts, service providers, parents, and nonpublic agencies serving children below age five have access to the information.

005.07A4 Prepare a written report of the Annual Meeting and the regional plan for distribution within 30 days of the meeting to all school districts and service providers within the Planning Region and the Department of Education. The report shall contain a listing of problems encountered, a description of the anticipated changes in programs, recommendations for changes in programming, and a roster of those in attendance;

005.07A5 A Planning Region Team meeting as described in 92 NAC 51-005.08 may serve as the Annual Meeting provided the requirements of 005.07A3 are met.

005.08 Early Intervention Planning Region Teams for Infants and Toddlers

005.08A Each school district shall participate in designating a school district, approved cooperative or Educational Service Unit to coordinate the initial Planning Region Team meeting(s) in their Region.

005.08A1 The school district, approved cooperative or Educational Service Unit designated to coordinate the initial meeting shall invite the following representatives:

005.08A1a Family members of children with disabilities (a minimum of 20% of the invited team members must be family members),

005.08A1b School districts within the Planning Region,

005.08A1b(1) School district personnel serving on the Planning Region Team are selected at the discretion of the school district, but shall include:

005.08A1b(1)(a) district decision maker(s), with a written plan for communication to gain input from direct service providers or,

005.08A1b(1)(b) direct service provider(s) with a written plan for communication to secure administrative approval and decision making.

005.08A1c Nebraska Department of Social Services,

005.08A1d Agency(ies) providing health and medical services in the Planning Region,

005.08A1e Agency(ies) providing services for children with disabilities and their families,

005.08A1f Head Start, and

005.08A1g agencies representing the traditionally underserved including agencies as applicable to the region that provide services for families of:

005.08A1g(1) low income,

005.08A1g(2) inner-cities,

005.08A1g(3) minority populations and

005.08A1g(4) rural areas;

005.08A1h clergy,

005.08A1i child care providers,

005.08A1j civic and state representatives and

005.08A1k other members based on community needs.

005.08B At the initial Planning Region Team meeting(s), the team members shall:

005.08B1 establish operational procedures and

005.08B2 determine a local lead agency to assist in the coordination of the Planning Region Team activities stated in the Nebraska Department of Social Services Early Intervention Regulations.

005.09 On-going Planning Region Activities

005.09A Each school district shall participate in the on-going Planning Region activities as stated in the Department of Social Services Early Intervention Regulations.

005.09B Any educational agency providing services coordination for infants and toddlers within a Planning Region shall do so only through a contract or subcontract with the Nebraska Department of Social Services and in accordance with the Department of Social Services Early Intervention Regulations.

006 Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data

006.01 Identification of Children with Disabilities

006.01A Each resident school district shall document annually its efforts to identify, evaluate and verify all children with disabilities. Districts shall demonstrate targeted efforts to meet the needs of children from historically underserved populations, particularly minority, low-income, inner-city and rural populations.

006.01B Within 45 calendars days after the agency contracting for services coordination receives a referral concerning an infant or toddler, the school district shall:

006.01B1 Complete the multidisciplinary evaluation in accordance with 92 NAC 51-006; and

006.01B2 Participate in an IFSP meeting in accordance with 92 NAC 51-007.

006.01C Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01C1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01C2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01C3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 006.01C and a listing of the members of the SAT or comparable problem solving team.

006.02 General Evaluation Procedure Requirements

006.02A Evaluations shall be provided and administered in the child's native or predominant language or other mode of communication unless it is not feasible to do so. Evaluation instruments shall have been validated for the specific purpose for which they are used; and shall be administered by trained personnel in conformance with the instructions provided by their producer. Testing materials and procedures must be selected and administered so as not to be racially or culturally discriminatory;

006.02B Tests and other evaluation materials shall include those tailored to assess specific areas of developmental, educational, and vocational need and not merely those which are designed to provide a single general intelligence quotient;

006.02C Tests shall be selected and administered so as to best insure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the tests purports to measure); and

006.02D No single procedure shall be used as a sole criterion for determining an appropriate educational program for a child.

006.02E Developmental delays for infants and toddlers shall be measured by appropriate diagnostic instruments and procedures, including informed clinical opinion, as per 92 NAC 51-006.

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team shall be responsible for the analysis, assessment and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in 92 NAC 51-006 and the definition found in 51-003.08, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP or IFSP.

006.03B For students attending nonpublic schools, an administrator or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C The MDT shall attempt to obtain data concerning the suspected disability from the parent of the child. All data gathered from the parent shall be documented and considered by the MDT to make verification decisions. Parents shall be invited to participate in the MDT verification process which may include MDT meetings.

006.03D The child shall be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior, and motor abilities.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

006.03E2a Whether the child qualifies as a child with a disability based on the criteria contained in 92 NAC 51-006.04 and definition contained in 92 NAC 51-003.08 with reference to the specific disability;

006.03E2b The basis for making the determination; and

006.03E2c A listing of the team members.

006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability

006.03F1 The MDT shall prepare a written report of the results of the evaluation.

006.03F2 The report shall include a statement of:

006.03F2a Whether the child has a specific learning disability based on the criteria contained in 92 NAC 51-006.04J and the definition found in 92 NAC 51-003.08I.

006.03F2b The basis for making the determination;

006.03F2c The relevant behavior noted during the observation of the child;

006.03F2d The relationship of that behavior to the child's academic functioning;

006.03F2e The educationally relevant medical findings, if any;

006.03F2f Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services;

006.03F2g The determination of the team concerning the effects of environmental, cultural, or economic disadvantage; and

006.03F2h A listing of the team members.

006.03F3 Each team member shall certify in writing if the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03G For a school age student who after initial MDT evaluation does not qualify for special education services or for a student with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts, county superintendents, or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 The MDT shall include at least:

006.04B1a A school psychologist or licensed psychologist;

006.04B1b The child's teacher(s) or a teacher qualified to teach a child that age;

006.04B1c A speech-language pathologist; and

006.04B1d A school district administrator or a designated representative.

006.04B2 In order for a child to be verified as having autism, the evaluation shall include the analysis and documentation of the manifestation of severe developmental and educational problems exhibited in varying degrees of atypical behavior in each of the following areas:

006.04B2a Disturbance of developmental rates and sequence. The child's developmental profile reflects varied developmental age levels for skills. The child exhibits delays, arrests, or regressions in physical, social, sensory processing, or learning skills. Areas of precocious or advanced skill development may also be present, while other skills may develop at normal or extremely depressed rates. The order of skill acquisition frequently does not follow normal developmental patterns.

006.04B2b Disturbance of responses to sensory stimuli. The child exhibits unusual, repetitive or nonmeaningful responses to auditory, visual, olfactory, gustatory, tactile, and/or kinesthetic stimuli. The child's behavior may vary from high levels of activity and responsiveness to low levels.

006.04B2c Disturbance of cognitive processes. The child exhibits abnormalities in the thinking process and in generalization. Delayed intellectual functioning may or may not be present. In addition, one or more of the following occurs:

006.04B2c(1) Difficulties in abstract thinking, awareness, or judgment;

006.04B2c(2) Perseverative thinking; or

006.04B2c(3) Impaired ability to process symbolic information.

006.04B2d Disturbance of communication. The child exhibits a qualitative impairment in verbal and/or nonverbal communication. The impairment includes problems that extend beyond speech and language to many aspects of the communicative process. Speech and/or language are either absent, delayed, or disordered.

006.04B2e Disturbance in relating to people, events and objects. The child displays difficulties in relating to people, events and/or objects. Often the child is unable to establish and maintain reciprocal relationships with people. Their capacity to use objects in an age appropriate or functional manner may be absent, arrested, or delayed. The child responds positively to consistency in environmental events to the point of exhibiting rigidity in routines. The child displays marked distress over changes, insistence on

following routines and/or a persistent occupation with or attachment to objects. The child may display a markedly restricted range of interest and/or stereotyped body movements. There may be a lack of interest or an inability to engage in imaginative activities.

006.04C Behavioral Disorder

006.04C1 The MDT shall include at least:

006.04C1a A school psychologist or licensed psychologist;

006.04C1b One of the child's teachers or a teacher qualified to teach a child of that age;

006.04C1c A special educator; and

006.04C1d A school district administrator or a designated representative.

006.04C2 A child who is verified behaviorally disordered shall demonstrate patterns of situationally inappropriate behavior which deviates substantially from the behavior of his or her age group with frequency, intensity, and duration. The child's inappropriate behavior shall interfere significantly with educational performance.

006.04C3 For a school age student, delinquency, discipline problems, substance abuse or social maladjustment shall not be the exclusive basis for verification.

006.04C4 Evaluation components by the multidisciplinary evaluation team shall include:

006.04C4a Direct observation. There will be measures of actual behavior which include the specific recording, through systematic formal observations, of the child's behavior including the frequency of the behaviors of concern. Careful documented observation of the varied activities and situations should be completed by at least one member of the multidisciplinary team other than the classroom teacher or the early childhood teacher. Documented observations should include:

006.04C4a(1) Identification of behaviors of concern, including identification of age or situationally inappropriate behaviors;

006.04C4a(2) Frequency of behaviors, i.e., the rate at which the behaviors occur within a specific length of time;

006.04C4a(3) Intensity of behaviors, i.e., level or severity of the behaviors;

006.04C4a(4) Duration of the behaviors, i.e., occurrence of behaviors through time;

006.04C4a(5) Comparable data for randomly selected nonidentified peers in comparable situations.

006.04C4b Reported behavior. There will also be measures of reported behavior that might include information gathered through checklists or rating scales and interviews which document the perceptions of school personnel and the parent or guardian regarding the behavioral pattern of the referred child.

006.04C4c Setting Analysis Data. Information should be gathered through observation, anecdotal record review, setting checklists, and interviews describing the setting from which a child was referred. Social functioning data should be gathered from sources such as teacher interviews and sociometric measures to identify how the referred child interacts with his or her peers. For a school age student, prior attempts to modify the student's educational program so as to make behavioral and academic achievement possible in the current placement should be documented.

006.04C4d Social-affective Assessment Data. Information about the social and emotional development of the child, including unique personal attributes, personal feelings, attitudes, perceptions, and thought processes, should be identified through child, parent and teacher interviews and other relevant procedures.

006.04C4e Academic achievement data. For a school age student, there shall also be an assessment of the student's academic achievement to evaluate the student's learning style and educational strengths and weaknesses.

006.04C4f Developmental assessment data for a child birth to age five. The child must demonstrate a deficit of 1.3 standard deviations or greater in at least one of the following areas: (1) intellectual functioning; (2) communication; or (3) at least one component of adaptive behavior.

006.04C5 A psychiatric or psychological evaluation from an outside agency may be used as part of the evaluation data, however, the MDT shall be responsible for the consideration of all available data, including data from an outside agency.

006.04C6 When behavior problems can be attributed solely to another disability, the child's primary disability should not be considered to be behaviorally disordered.

006.04D Deaf-Blindness

006.04D1 The MDT shall be composed of those persons required to verify a hearing impairment (92 NAC 51-006.04E) and a visual impairment (92 NAC 51-006.04M).

006.04D2 The child with deaf-blindness shall meet the verification criteria for both hearing impairments and visual impairments.

006.04E Hearing Impairments

006.04E1 The MDT shall include at least:

006.04E1a The child's teacher or teacher qualified to teach a child that age;

006.04E1b An educator endorsed to teach a child with hearing impairments;

006.04E1c A speech-language pathologist; and

006.04E1d A school district administrator or a designated representative.

006.04E2 In order for a school age child to be verified as a child with hearing impairments the evaluation shall include the analysis and documentation of:

006.04E2a The adverse effect the impairment has on the development or educational performance of the child.

006.04E2b A written report signed by a licensed or certified audiologist documenting a unilateral or bilateral hearing loss based on a current audiological evaluation;

006.04E2c A documented hearing loss that has been determined or can be expected to produce a delay or interference with the development and maintenance of the following:

006.04E2c(1) Effective verbal communication;

006.04E2c(2) Expressive or receptive language development;

006.04E2c(3) Academic and vocational performance;

006.04E2c(4) Social or emotional competence; or

006.04E2c(5) Adaptive behavior skills.

006.04E3 In order for a child below age five to be verified as a child with hearing impairments, the evaluation shall include:

006.04E3a A preliminary audiometric screen; and

006.04E3b A written report signed by a licensed or certified audiologist documenting a hearing loss.

006.04E3c The analysis and documentation that the hearing loss has been determined to or can be expected to produce significant delays that would:

006.04E3c(1) Result in standardized test scores falling 1.3 standard deviations below the mean in one or more of the following areas: receptive language, expressive language, speech production or cognition; or

006.04E3c(2) Result in a social/behavioral disability.

006.04F Mental Handicap

006.04F1 The MDT shall include at least:

006.04F1a A school psychologist or licensed psychologist;

006.04F1b At least one of the child's teachers or a teacher qualified to teach a child that age;

006.04F1c A special educator; and

006.04F1d A school district administrator or a designated representative.

006.04F2 All test scores used in verifying a child with a mental handicap shall assume a mean of 100 and a standard deviation of 15 points.

006.04F3 School age students with a mental handicap shall be verified in one of three categories: mild, moderate, or severe/profound.

006.04F4 In order for a school age student to be verified as a student with a mental handicap: mild, the evaluation shall include the analysis and documentation of:

006.04F4a General intellectual functioning in the range of two (2.0) to three (3.0) standard deviations below the mean (I.Q. of 56 to 70) as determined by individual evaluation using appropriate instruments with commensurate documented adaptive behavior.

OR

006.04F4b Significant adaptive behavior and/or academic deficiencies shall occur in 1 (one) or more areas as observed in the school and/or the community and functioning at I.Q. level of 71 to 80. This may include adaptive behaviors such as communication, daily living, motor and social skills; and/or academic areas such as oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, and mathematics reasoning. Significant deficiencies are defined as standard scores of at least 2.0 standard deviations below the mean (30 standard score points).

006.04F5 In order for a school age student to be verified as a student with a mental handicap: moderate, the evaluation shall include analysis and documentation of:

006.04F5a General intellectual functioning of three (3.0) to four (4.0) standard deviations below the mean, with commensurate documented adaptive behavior. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the examiner may use the higher score as the indicator of the child's intellectual ability.

006.04F6 In order for a school age student to be verified as a student with a mental handicap: severe/profound, the evaluation shall include the analysis and documentation of:

006.04F6a General intellectual functioning of at least four (4.0) standard deviations below the mean, with commensurate documented adaptive behavior. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the examiner may use the higher score as the indicator of the child's intellectual ability.

006.04F7 In order for a child below age five to be verified as a child with a mental handicap, the evaluation shall include the analysis and documentation of:

006.04F7a At least a two (2.0) standard deviation deficit in intellectual functioning, with at least a 1.3 standard deviation deficit in adaptive behavior; or

006.04F7b At least a two (2.0) standard deviation deficit in adaptive behavior, with at least a 1.3 standard deviation deficit in intellectual functioning; or

006.04F7c A medical condition or syndrome which can be expected to produce such delay in later childhood.

006.04G Multiple Impairments

006.04G1 The MDT shall include at least:

006.04G1a A school psychologist or licensed psychologist;

006.04G1b A special educator;

006.04G1c Those personnel required to verify the other suspected disability; and

006.04G1d A school district administrator or a designated representative.

006.04G2 In order for a child to be verified as a child with multiple impairments the evaluation shall include the analysis and documentation of:

006.04G2a Verification of a school age student as a student with a mental handicap: moderate or mental handicap: severe/profound and for a child below age five verification of a mental handicap (as per 92 NAC 51-006.04F); and

006.04G2b Verification of one or more additional disabilities.

006.04G3 The multiplicity of disabilities shall be so severe that a primary disability cannot be determined.

006.04H Orthopedic Impairments

006.04H1 The MDT shall include at least:

006.04H1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04H1b A special educator;

006.04H1c A physical therapist; or an occupational therapist; or both, when appropriate; and

006.04H1d A school district administrator or a designated representative.

006.04H2 In order for a child to be verified as a child with orthopedic impairments, the evaluation shall include the analysis and documentation of:

006.04H2a A signed, written report from a physician which describes the severe motor impairment and any medical implications;

006.04H2b The child's level of development or educational performance is adversely affected; and

006.04H2c A muscular or neuromotor impairment, or skeletal deformity that limits the ability to:

006.04H2c(1) Move about;

006.04H2c(2) Maintain postures;

006.04H2c(3) Manipulate materials required for learning; or

006.04H2c(4) Perform activities of daily living.

006.04I Other Health Impairments

006.04I1 The MDT shall include at least:

006.04I1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04I1b A special educator;

006.04I1c A school district administrator or a designated representative.

006.04I2 Chemical or alcohol dependency alone shall not be sufficient basis for verification of other health impairments.

006.04I3 In order for a child to be verified as a child with other health impairments, the evaluation shall include the analysis and documentation of:

006.04I3a A signed, written report from a physician which describes the current health status and gives any medical implications of the impairment;

006.04I3b Limited strength, vitality or alertness, due to a chronic or acute health impairment; and

006.04I3c The child's adversely affected development or educational performance.

006.04J Specific Learning Disabilities

006.04J1 The MDT shall include at least:

006.04J1a For a school age child, the child's regular teacher(s) or a regular classroom teacher qualified to teach a child of that age;

006.04J1b For a child below age 5, a teacher qualified to teach a child below age 5;

006.04J1c A special educator with knowledge in the area of specific learning disabilities;

006.04J1d A school psychologist or licensed psychologist; and

006.04J1e A school district administrator or a designated representative.

006.04J2 The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

006.04J2a A visual, hearing or motor impairment;

006.04J2b A mental disability;

006.04J2c A behavioral disorder; or

006.04J2d Environmental, cultural or economic disadvantage.

006.04J3 All test scores used in verifying a student with suspected specific learning disabilities shall assume a mean of 100 and a standard deviation of 15 points.

006.04J4 In order for a child to be verified as a child with specific learning disabilities the child must demonstrate a severe discrepancy between achievement and intellectual ability in one or more of the major areas listed in 92 NAC 51-006.04J4c. The evaluation shall include the analysis and documentation of:

006.04J4a The observation and documentation of the child's academic functioning, educational environment, and the child's interaction with that environment (basic psychoeducational processes) in the regular classroom, conducted by at least one team member other than the child's classroom teacher;

006.04J4b The results of an individual test of intelligence. The child shall score above the minus one (-1.0) standard deviation point, full scale I.Q. on an individual test of intelligence. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the higher score may be used as the indicator of the child's intellectual ability.

006.04J4c The results of the child's assessed ability level. The child's standard score in one or more major area(s) must be at least 1.5 standard deviations below the child's assessed ability level (20 standard score points). In addition, the standard score in the major area which is used to establish the qualifying discrepancy shall fall at or below 90 standard score points regardless of the discrepancy between assessed ability level and the major area. Discrepancies shall be verified in terms of standard score units rather than age or grade equivalents. The major areas are oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning.

006.04J5 Particular attention shall be devoted to the technical adequacy of all instruments employed including the reliability of results, validity for the purposes employed, normative samples and applicability to the child being assessed.

006.04K Speech-Language Impairments

006.04K1 The MDT shall include at least:

006.04K1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04K1b A speech-language pathologist; and

006.04K1c A school district administrator or a designated representative.

006.04K2 A child verified with speech-language impairments shall demonstrate significant difficulty in one or more of the following areas:

006.04K2a Language (including form, content or function);

006.04K2b Articulation (including speech production);

006.04K2c Voice; and

006.04K2d Fluency.

006.04K3 All test scores used in verifying a child with suspected speech-language impairments shall assume a mean of 100 and a standard deviation of 15 points.

006.04K4 Language (including form, content or function)

006.04K4a In order for a child below age five to be verified as a child with speech-language impairments in the area of language the evaluation shall include the analysis and documentation of:

006.04K4a(1) The adverse effect the impairment has on the development of the child.

006.04K4a(2) Performance from comprehensive standardized language tests (which may include but not be limited to vocabulary tests) which shall be at least 2.0 standard deviations below the mean for chronological age.

006.04K4b In order for a school age student to be verified as a student with speech-language impairments in the area of language, the evaluation shall include the analysis and documentation of:

006.04K4b(1) The adverse effect the impairment has on the development or educational performance of the student.

006.04K4b(2) General intellectual ability. If sufficient information can be documented to determine that a student has at least average overall ability, a psychological evaluation is not required. If the MDT determines the need, a psychological assessment shall be completed to determine a standard score indicating general intellectual ability. Selection and interpretation of diagnostic tools shall take into consideration the language functioning of the child to be evaluated, so that the estimate of the child's intellectual functioning is minimally biased by the language impairment. A psychological evaluation needs to include a determination of adaptive behavior levels.

006.04K4b(3) The student's expressive and receptive communication skills. These may include the areas of syntax, morphology, semantics, pragmatics, and language formulation and retrieval.

006.04K4b(4) The student's communication which shall consistently score greater than 1.3 standard deviations (20 standard score points) below the student's overall ability level and it shall affect communication in the classroom, at home, or with peers. Prognosis, the student's motivation, dialect and cognitive abilities must all be considered and may affect the student's eligibility. Documentation may be reported by informants such as parents or teachers or in the form of language samples. At least one form of the assessment instruments used must yield a standard score.

006.04K4b(5) Students who require the use of alternative or augmentative modes or devices for communication may be verified as language impaired.

006.04K5 Articulation (including speech production)

006.04K5a In order for a child below age five to be verified as a child with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04K5a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04F5a(2) Defects of the speech articulators which can be expected to produce significantly disordered speech production.

OR

006.04F5a(3) Demonstrate at least two of the following three criteria:

006.04F5a(3)(a) The child must demonstrate at least three simple phoneme articulation errors in the pre-vocalic (initial) and post-vocalic (final) positions. The team must document that the errors are not maturational in nature when compared to the Iowa-Nebraska Articulation Norms.

or

006.04F5a(3)(b) A child must demonstrate more than two consistent vowel phoneme errors that are not a function of dialect or maturation (excluding vocalic /r/), which are significantly effecting intelligibility.

or

006.04F5a(3)(c) A child must demonstrate multiple consonant errors resulting in connected speech which is less than 75% intelligible in known context. If intelligibility is determined to be a factor, it must be effected in at least two out of three environments (e.g., home, school, and diagnostic setting). Observations may be reported by informants, such as parents or teachers.

006.04F5b In order for a child of the ages of five and six years to be verified as a child with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04F5b(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04F5b(2) At least three simple phoneme articulation errors in the pre-vocalic (initial) and post-vocalic (final) positions. The team must document that the errors are not maturational in nature when compared to the Iowa-Nebraska Articulation Norms.

OR

006.04F5b(3) The child must demonstrate significant oral motor problems, which are interfering with, or will potentially interfere with, normal articulation development. The oral motor problems must be documented in the multidisciplinary team findings.

OR

006.04K5b(4) The child must demonstrate more than two consistent vowel phoneme errors, not related to dialect (excluding vocalic /r/), which are significantly affecting intelligibility.

OR

006.04K5b(5) The child must demonstrate multiple consonant errors in connected speech which is less than 75% intelligible in known context. If intelligibility is determined to be a factor, it must be affected in at least two out of three environments (e.g., home, school and diagnostic setting). Observations may be reported by informants, such as parents or teachers.

006.04K5c In order to verify a student age seven or older as a student with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04K5c(1) The adverse effect the impairment has on the development or educational performance of the student.

006.04K5c(2) Articulation error(s) when compared to the Iowa-Nebraska Articulation Norms, as assessed via picture, sentence or paragraph articulation test, and whose errors occur at least 50% of the time in connected speech.

Stimulability, prognosis, student motivation, effect of condition on the student's communication in the classroom, at home with peers, dialect, and mental age must all be considered.

006.04K6 Voice

006.04K6a In order for a child to be verified as a child with speech-language impairments in the area of voice, the evaluation shall include the analysis and documentation of:

006.04K6a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04K6a(2) Chronic voice deviance, as assessed by the specific examination of:

006.04K6a(2)(a) Oral peripheral structures;

006.04K6a(2)(b) Intensity (loudness);

006.04K6a(2)(c) Vocal pitch, (range, inflection and appropriateness);

006.04K6a(2)(d) Resonation (nasality and air flow); and

006.04K6a(2)(e) Phonatory quality (breathiness, hoarseness and harshness).

006.04K6a(3) The team must consider and document prognosis, child motivation and the effect of the condition on the child's communication in the educational setting, at home and with peers.

006.04K6b Mild hoarseness, evidenced when history of upper respiratory disease or upper respiratory allergy exists, is not appropriate as a sole basis for verification.

006.04K7 Fluency

006.04K7a In order for a child to be verified as a child with speech-language impairments in the area of fluency, the evaluation shall include the analysis and documentation of:

006.04K7a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04K7a(2) Observation in multiple environments (educational or diagnostic setting, with peers, at home);

006.04K7a(3) Frequency of dysfluencies by type;

006.04K7a(4) Duration of dysfluencies;

006.04K7a(5) Response to stress;

006.04K7a(6) Struggle and avoidance characteristics; and

006.04K7a(7) Type and level of dysfluencies, repetitions (phrase, whole word, syllable and phoneme), prolongations and blocks (fixations).

006.04K7b Dysfluencies solely attributable to maturational levels are not appropriate for verification. The team must consider and document prognosis, child's motivation, and the effect of the condition on the child's communication in the educational setting, at home, and with peers.

006.04L Traumatic Brain Injury

006.04L1 The MDT shall include at least:

006.04L1a A school psychologist or licensed psychologist;

006.04L1b The child's teacher(s) or a teacher qualified to teach a child of that age;

006.04L1c A special education teacher or appropriate related services provider; and

006.04L1d A school district administrator or a designated representative.

006.04L2 In order for a child to be verified as having a traumatic brain injury, the evaluation shall include the analysis and documentation of:

006.04L2a A description of an event that has resulted in an acquired insult to the brain (generally provided by medical personnel or other specialist with knowledge of traumatic brain injury);

006.04L2b Evidence of impaired functioning in one or more of the following areas that has been determined to produce an adverse effect on the child's educational or developmental performance:

006.04L2b1 Cognition (shall include, but not be limited to attention, memory/learning, organization, problem solving, abstract reasoning, communication, judgment, visual perception and auditory perception);

006.04L2b2 Sensory functioning;

006.04L2b3 Motor functioning (shall include, but not be limited to motor sequencing, planning and execution);

006.04L2b4 Behavior (shall include, but not be limited to agitation, irritability, aggression, apathy, lack of insight, impulsivity, poor emotional control, disinhibition, secondary depression and withdrawal, and difficulties with social relationships); and

006.04L2c The severity of the impaired functions which may vary across situations, activities and time. Where appropriate, the team must consider and document these variations.

006.04M Visual Impairments

006.04M1 The MDT shall include at least:

006.04M1a The child's teacher(s) or a teacher qualified to teach a child of that age;

006.04M1b An educator endorsed to teach a child with visual impairments; and

006.04M1c A school district administrator or a designated representative.

006.04M2 A child with a visual impairment(s) shall be verified in one of three categories: blind, legally blind or partially sighted.

006.04M2a Visual Impairment: Blind

006.04M2a(1) In order to be verified as a child with a visual impairment: blind, the evaluation shall include the analysis and documentation of:

006.04M2a(1)(a) No more than light perception as stated in a signed report by a licensed ophthalmologist or optometrist.

006.04M2a(1)(b) The need for adapted curriculum, method, materials, and equipment for learning; and

006.04M2a(1)(c) The educational significance of the visual impairment including:

006.04M2a(1)(c)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher; and

006.04M2a(1)(c)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance in the educational setting, or orientation and mobility.

006.04M2b Visual Impairment: Legally Blind

006.04M2b(1) In order to be verified as a child with a visual impairment: legally blind, the evaluation shall include the analysis and documentation of:

006.04M2b(1)(a) A visual acuity of 20/200 or less in the better eye after correction or a contiguous field restricted to 20 degrees or less as stated in a signed report by a licensed ophthalmologist or optometrist;

006.04M2b(1)(b) The need for adapted curriculum, methods, materials, and equipment, or any combination thereof for learning; and

006.04M2b(1)(c) The educational significance of the visual impairment including:

006.04M2b(1)(c)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher; and

006.04M2b(1)(c)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance, or orientation and mobility.

006.04M2c Visual Impairment: Partially Sighted

006.04M2c(1) In order to be verified as a child with a visual impairment: partially sighted, the evaluation shall include the analysis and documentation of:

006.04M2c(1)(a) A signed report by a licensed ophthalmologist or optometrist to certify a structural defect, condition, or disease of the eye which may affect the student's ability to learn visually.

006.04M2c(1)(b) The educational significance of the visual impairment including:

006.04M2c(1)(b)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher.

006.04M2c(1)(b)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance in the educational setting, or orientation and mobility.

006.04M2c(1)(c) In addition to 006.04M2c(1)(a) and 006.04M2c(1)(b), the child shall meet the requirements of either 006.04M2c(1)(d) or 006.04M2c(1)(e), as listed below.

006.04M2c(1)(d) An assessment of the child's functional vision. All assessed behaviors shall be elicited by both light and pattern. Absence of three or more the visual behaviors shall constitute a detriment in functional vision. The observable visual behaviors shall may include but are not limited to: peripheral orientation, fixation, ability to shift gaze, ability to track, and ability to converge.

OR

006.04M2c(1)(e) A visual assessment as stated in a signed report by a licensed ophthalmologist or optometrist to certify at least one of the following:

006.04M2c(1)(e)(i) A distant visual acuity of 20/50 or less, in the better eye after correction;

006.04M2c(1)(e)(ii) A near visual acuity equivalent to or less than 8 point type at 40 centimeters, in the better eye after correction;

006.04M2c(1)(e)(iii) A central visual field loss of any degree in both eyes; or

006.04M2c(1)(e)(iv) A peripheral visual field of 60 degrees or less in the better eye.

006.05 Reevaluation

006.05A A reevaluation of each child with a previously verified disability, based on the verification procedures required in 92 NAC 51-006, shall be conducted at least every three years or more frequently if conditions warrant or if the child's parent(s) or teacher requests a reevaluation.

006.06 Independent Educational Evaluation

006.06A A parent has the right to obtain an independent educational evaluation at no cost to the parent if the parent disagrees with an evaluation obtained by the school district's MDT. Such independent evaluation shall be at the expense of the school district or the school district shall insure that the evaluation is otherwise provided at no cost to the parent.

006.06B The school district may initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate. If the hearing officer's final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the school district's expense.

006.06C If a hearing officer requests an independent educational evaluation as part of a hearing, the costs of the evaluation shall be at the expense of the school district.

006.06D Whenever an independent educational evaluation is at school district expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation.

006.06E If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

006.06E1 Shall be considered by the MDT with respect to the provision of a free appropriate public education.

006.06E2 May be presented as evidence at a hearing under the provisions of 92 NAC 55 regarding the child.

006.06F The school district shall provide to parents on request, information on those agencies or individuals approved by the Department of Education for the provision of evaluation services.

007 Individual Education Program (IEP) and Individual Family Service Plan (IFSP)

007.01 If a determination is made that a child needs special education and related services, an individualized education program or individualized family service plan must be developed for the child. In order to fulfill the requirements of 007.01 for infants and toddlers, school districts shall meet the requirements of 007.07. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP, rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 IEP Development

007.02A The Individual Education Program (IEP) is a written statement for a child with a verified disability which specifies the special education and related services necessary to assure that child a free, appropriate public education. Parents shall receive a copy of the IEP. The IEP shall include:

007.02A1 A statement of the child's present level(s) of development or educational performance.

007.02A2 A statement of the annual goals describing anticipated behavior to be achieved, based on the child's present level of development or educational performance.

007.02A3 A statement of the measurable short-term instructional objectives.

007.02A4 A statement of the specific special education and related services to be provided to the child.

007.02A5 A description of the extent to which the child will participate in the regular education program.

007.02A6 The projected date(s) for the initiation of services and anticipated duration of service(s).

007.02A7 Appropriate objective criteria, evaluation procedures and schedules for determining, on at least an annual basis, the achievement of the instructional short-term objectives.

007.02A8 A list of individuals responsible for implementing the IEP.

007.02A9 The amount of time per day, days per week, and the number of months of service to be delivered to children below age five.

007.02A10 The date of the IEP conference.

007.02A11 A statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting.

007.02A11a If the IEP team determines that transition services are not needed in instruction, community experiences, or employment and other post school adult living objectives, the IEP must include a statement to that effect and the basis upon which the determination was made.

007.02A12 The plan of transportation and any special conditions necessary for safe transport of the child with a verified disability shall be part of the IEP, when applicable.

007.02B An IEP shall be developed and implemented for each resident public and nonpublic school child who receives special education services. School districts shall establish and demonstrate procedures for developing, implementing, reviewing, revising, maintaining records for and evaluating IEPs. The IEP must be in effect before special education and related services are provided to a child, and must be implemented as soon as possible, not to exceed the procedural timelines set forth in 92 NAC 51-009.02.

007.03 IEP Conferences

007.03A The school district is responsible for initiating and conducting conferences for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

007.03B A conference must be held for this purpose at least once a year. IEP meetings may be requested more frequently.

007.03C An IEP conference must be held within thirty (30) calendar days of the verification of the child's disability.

007.03D After the initial IEP conference, IEPs must be in effect at the beginning of each school year.

007.04 Parent Participation

007.04A The school district shall take steps to insure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

007.04A1 Notifying parents of the IEP conference early enough to insure that they will have an opportunity to attend; and

007.04A2 Scheduling the meeting at a mutually agreed on time and place.

007.04B The notification under 007.04A1 must indicate the purpose, time and location of the meeting and who will be in attendance.

007.04B1 If the purpose of the meeting is the consideration of transition services for a student (as required by 92 NAC 51-007.02A11) the notification must also:

007.04B1a Indicate this purpose;

007.04B1b Indicate that the school district will invite the student to the meeting; and

007.04B1c Identify any other agency that will send a representative.

007.04C If neither parent can attend, the resident district shall use other methods to insure parent participation, including individual or conference telephone calls.

007.04D A meeting may be conducted without a parent in attendance if the resident district is unable to convince the parents they should attend. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:

007.04D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.04D2 Copies of correspondence sent to the parents and any responses received; and

007.04D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.04E The school district shall take whatever action is necessary to insure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.05 IEP Team Participants

007.05A The school district shall document that each IEP conference includes at least the following participants:

007.05A1 A representative of the resident school district, other than the child's teacher, who is qualified to provide, or supervise the provision of special education. In the case of a Class I district, a board member or the County Superintendent may serve as the district representative. The County Superintendent shall be responsible for the development and maintenance of the IEP for high school age students with disabilities residing in districts not maintaining a high school;

007.05A2 The child's teacher(s);

007.05A3 One or both of the child's parents, or documentation of 92 NAC 51-007.04D;

007.05A4 The child (where appropriate);

007.05A5 For students attending nonpublic schools, a representative of the nonpublic schools. If the representative cannot attend, other methods shall be used to insure participation by the nonpublic school, including individual or conference telephone calls;

007.05A6 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to insure participation by the approved service agency, including written communication, or individual or conference telephone calls;

007.05A7 Other individuals at the discretion of the parent or the school district; and

007.05A8 For children evaluated for the first time, at least one member of the multidisciplinary evaluation team or a person who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation;

007.05A9 For students with disabilities aged sixteen years and older, and for students below age sixteen whose need for transition services is being considered:

007.05A9a The student;

007.05A9a(1) If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered.

007.05A9b A representative of the school district responsible for providing or supervising the provision of transition services; and

007.05A9c If appropriate, a representative of each other participating agency providing the transition services included in the student's individualized education program.

007.05A9c(1) If an agency invited to send a representative to the meeting does not do so, the school district shall take other steps to obtain the participation of the other agency in the planning of any transition services.

007.06 Transition from School to Post School Activities

007.06A The district shall provide a coordinated set of activities designed within an outcome-oriented process, which promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment, continuing and adult education, adult services, independent living, or community participation.

007.06A1 The coordinated set of activities shall be based upon the individual student needs taking into account the student's preferences and interests, and;

007.06A2 Shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

007.06B In the case where a participating agency, other than the resident school district, fails to provide agreed upon services, the resident school district shall, as soon as possible, reconvene the IEP team to identify alternative strategies to meet the transition objectives, and, if necessary, revise the student's IEP.

008.06C As used in this section, "participating agency" means a state or local agency, other than the school district responsible for the student's education, that is financially and legally responsible for providing transition services to the student.

007.07 Responsibility for Development of IFSP

007.07A In collaboration with the agency contracting for services coordination, an IFSP shall be developed and implemented for each resident infant or toddler who is determined to be eligible for special education services in accordance with 92 NAC 51-006. The plan must be developed in accordance with 92 NAC 51-007 and based on the multidisciplinary evaluation described in 92 NAC 51-006.04 and any other relevant information. The services coordinator, with the family, is responsible for arranging the team meeting, developing the IFSP team and facilitating the development of the IFSP consistent with Department of Social Services' Early Intervention regulations.

007.07A1 In the event the family declines services coordination, the school district, with the family, is responsible for the development of the IFSP consistent with the Department of Social Services' Early Intervention regulations and 92 NAC 51-007.07.

007.07A2 If there is a dispute as to who has responsibility for developing or implementing an IFSP, the Departments of Education and Social Services shall resolve the dispute or assign responsibility.

007.07B If a determination is made that an infant or toddler needs special education and related services, an Individualized Family Service Plan (IFSP) shall be developed for the child and the family. The IFSP shall include:

007.07B1 A statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development which is based on professionally acceptable objective criteria;

007.07B2 With the concurrence of the family, include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;

007.07B3 A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine:

007.07B3a The degree to which progress toward achieving the outcomes is being made; and

[illegible] Whether modifications or revisions of the outcomes or services are necessary.

[illegible] A statement of the specific early intervention services necessary to meet the unique needs of the child and the family including:

[illegible] The frequency, intensity, and method of delivering the services.

[illegible] frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

[illegible] method means how a service is provided.

[illegible] The natural environments in which early intervention services will be provided.

[illegible] The location of the services.

[illegible] location means the actual place or places where a service will be provided.

[illegible] The payment arrangements, if any.

[illegible] To the extent appropriate, medical and other services the child needs, but that are not required by 60 NMC 51, and the funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

[illegible] This requirement does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

[illegible] The projected date(s) for initiation of the service(s) which must begin as soon as possible after the IFSP meeting.

[illegible] The anticipated duration of those services.

[illegible] The name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

[illegible] The agency continuing to service coordination may assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP, or appoint a new service coordinator.

60.7.[illegible] The steps to be taken to support the transition of the child to preschool services to the extent that those services are considered appropriate, or other services that may be available, if appropriate.

60.7.[illegible] The steps include:

60.7.[illegible](1) discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

60.7.[illegible](2) procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting; and

60.7.[illegible](3) with parental consent, the transmission of information about the child to ensure continuity of services, including evaluation and copies of IFSPs that have been developed and implemented.

60.7.[illegible] IFSP Initial and Annual Conferences

60.7.[illegible] For an infant or toddler who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within 45 calendar days of the referral.

60.7.[illegible] A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided. Parents shall receive a copy of the IFSP within seven calendar days of the IFSP meeting.

60.7.[illegible] IFSP meetings must be conducted:

60.7.[illegible](1) in settings and at times that are convenient to families; and

60.7.[illegible](2) in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

60.7.[illegible] Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

60.7.[illegible] The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan.

60.7.[illegible](1) If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided.

60.7.[illegible](2) The early intervention services to which parental consent is obtained must be provided.

60I-5.00 IFSP Periodic Reviews.

60I-5.001 A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

60I-5.001(1) The degree to which progress toward achieving the outcomes is being made; and

60I-5.001(2) Whether modifications or revision of the outcomes or services is necessary.

60I-5.002 The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

60I-5.003 The periodic review of the IFSP must provide for the participation of the persons required by 60 1(2) 51-60I-1(3), 60I-1(4), 60I-1(5) and 60I-1(6). If conditions warrant, provisions must be made for the participation of other representatives identified in 60 1(2) 51-60I-1(3), 60I-1(6) and 60I-1(7).

60I-5.0 IFSP Team Participants.

60I-5.00 The school district shall document that each IFSP conference includes at least the following participants:

60I-5.00(1) The parent or parents of the child;

60I-5.00(2) Other family members, as requested by the parent, if feasible to do so;

60I-5.00(3) An advocate or person outside of the family, if the parent requests that the person participate;

60I-5.00(4) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated to be responsible for implementation of the IFSP;

60I-5.00(5) A representative of the school district who has the authority to commit district resources; and

60I-5.00(6) As appropriate, persons who will be providing services to the child; and

60I-5.00(7) A person or persons directly involved in conducting the evaluations.

60I-5.00(8) If the person or persons is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including:

60I-5.00(8)(1) participating in a telephone conference call;

007.10A7a(2) having a knowledgeable authorized representative attend the meeting; or

007.10A7a(3) making pertinent records available at the meeting.

007.11 Transition to Preschool Programs

007.11A The agency contracting for services coordination is responsible for convening, with the approval of the child's family, a conference including the family and school district at least 90 days before the child's third birthday or at least 90 days before completion of the early intervention program. The purpose of the meeting is to:

007.11A1 Review the child's program options for the period from the child's third birthday through the remainder of the school year; and

007.11A2 Establish a transition plan.

007.12 Provision of Early Intervention Services Before the Evaluation is Complete

007.12A Early intervention services for the purpose of completion of the evaluation for a child and the child's family may commence before the completion of the evaluation if the following conditions are met:

007.12A1 Parental consent is obtained.

007.12A2 An interim IFSP is developed that includes:

007.12A2a the name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

007.12A2b the early intervention services that have been determined to be needed immediately by the child and the child's family.

007.12A3 The evaluation and assessment are completed within the 45 day time period.

007.13 Accountability

007.13A Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each child in achieving the outcomes in the child's IFSP. However, an agency or person will not be held accountable if a child does not achieve the growth projected in the child's IFSP.

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

008.01A The school district shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities including children in public or nonpublic schools and approved service agencies are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.

008.01C In interpreting the information on the child's individual education plan (IEP) or IFSP to make placement decisions, each school district shall:

008.01C1 Draw upon the information from the child's present level of development or educational performance, physical condition, social or cultural background and adaptive behavior;

008.01C2 Insure that information obtained from all of these sources is documented and carefully considered;

008.01C3 Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C4 Insure that the placement decision is made in conformity with the least restrictive environment rules in 92 NAC 51-008.01.

008.01D Each school district or approved cooperative shall assure an array of special education placement options are available. Those options shall include: instruction in regular classes; supplemental services such as resource room; itinerant instruction or consultative services to be provided in conjunction with regular class placement; special classes; special schools; home instruction and instruction in hospitals and institutions.

008.01E The need for related services of an instructional nature shall be documented on the IEP or IFSP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

008.01F The resident district shall insure that:

008.01F1 The educational placement of each child with a verified disability:

008.01F1a is determined at least annually;

008.01F1b Is based on his or her individual education program; and

008.01F1c Is as close as possible to the child's home.

008.01F2 The various array of placement options included under 92 NAC 51-008.01D are available to the extent necessary to implement the individual education program for each child with a verified disability;

008.01F3 Unless a child's individual education program (IEP) or IFSP requires some other arrangement, the child is educated in the school which he or she would attend if not disabled; and

008.01F4 In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

008.01G The school district shall take steps to provide nonacademic and extracurricular services and activities as set forth in 34 CFR 300.306, including meals and recess periods, in such manner as is necessary to afford each school age student with a verified disability an equal opportunity for participation with nonhandicapped students who are not disabled in those services and activities to the maximum extent appropriate to meet the needs of each child.

008.02 Placement Requirements

008.02A School districts may place a child with verified disabilities in special education programs provided;

008.02A1 Written permission to initially place the child in the proposed program is obtained from the parent; or

008.02A2 An order to place the child in the proposed program is obtained from a Department of Education appointed hearing officer or court of competent jurisdiction.

008.02B For the purpose of observation, evaluation or providing continuity of programming; a child who has transferred into the district from another district with evidence of previous special education placements may be temporarily placed with written approval of the parent. An IEP or IFSP shall be developed which establishes the specific conditions and time lines for any temporary placement as part of the evaluation process. This temporary placement shall not exceed forty-five (45) school days.

008.02C If the school district of residence has made available an appropriate special education program for a child with a verified disability, and the child's parents choose to unilaterally place the child in an alternative service, the district is not required to pay for the child's education in the alternative setting.

008.03 Suspension and Expulsion of Students With Verified Disabilities

008.03A All rights and procedures for expulsion of a student with a verified disability shall be afforded the student according to Neb. Rev. Stat. 79-4170 to 79-4205 and 92 NAC 51-009.

008.03A1 Expulsion

008.03A1a For the purposes of this Rule, any exclusion from school for more than 10 school days at one time shall be defined as an expulsion from school.

008.03A1b The expulsion of a student with a disability for behavior which is directly and substantially related to the student's disability is prohibited.

008.03A1c To properly determine whether a student's behavior is directly and substantially related to the student's disability, an IEP team shall be convened. The IEP team shall meet the qualifications contained in 92 NAC 51-007 including personnel and notification of parents. The IEP team shall determine:

008.03A1c(1) Whether the student's behavior is directly and substantially related to his or her verified disability;

008.03A1c(2) If further assessment is warranted; and

008.03A1c(3) Whether or not the student's current IEP and placement are appropriate.

008.03A1d If the student's behavior is properly determined not to be directly and substantially related to his or her disability, the student may be expelled.

008.03A1e Prior to the expulsion of a student with a verified disability, the district shall observe all procedures required for a change in placement, including:

008.03A1e(1) Notifying parents in writing according to 92 NAC 51-009.03 of the district's intention to seek expulsion;

008.03A1e(2) Informing the parents of their right to request a hearing under 92 NAC 55; and

008.03A1e(3) Allowing the child to remain in his or her current educational placement pending resolution of any review proceedings.

008.03A1f In cases where the district seeks injunctive relief through the court to remove the student from school, the requirements of 92 NAC 51-008.03A do not apply.

008.03A2 Suspension

008.03A2a A student may be suspended from school for up to ten school days even if the behavior is related to the student's disability.

008.03A2b A suspension of ten school days or less at one time does not constitute a change in placement, however, if the student is suspended for ten cumulative days during the school year, an IEP team shall be convened for each subsequent suspension to review and determine the appropriateness of the student's special education program and placement.

009 Procedural Safeguards

009.01 Accessibility and Confidentiality of Records

009.01A All school districts, approved cooperatives, and provisionally approved service providers with whom the school district shares personally identifiable data shall be bound by the accessibility and confidentiality requirements of this section.

009.01B The parents of a child with a disability or the child with a disability, if the child has attained eighteen years of age, (type and severity of the child's disability shall be taken into consideration) shall be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

009.01C Access Rights

009.01C1 Each service agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the service agency. The service agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

009.01C2 The right to inspect and review education records includes:

009.01C2a The right to a response from the participating service agency to reasonable requests for explanations and interpretations of the records; and

009.01C2b The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

009.01C2c The right to have a representative of the parent inspect and review the records.

009.01C3 A service agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.01D Record of Access

009.01D1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.01E Records On More Than One Child

009.01E1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.01F List of Types and Locations of Information

009.01F1 Each service agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the service agency.

009.01G Fees

009.01G1 A service agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

009.01G2 A service agency may not charge a fee to search for or to retrieve information.

009.01H Amendment of Records at Parent's Request

009.01H1 A parent who believes that information in education records collected, maintained, or used is inaccurate, or misleading, or violates the privacy or other rights of the child, may request the service agency which maintains the information to amend the information.

009.01H2 The service agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.01H3 If the service agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal, and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.01I Opportunity for a Local Administrative Review

009.01I1 The service agency shall, on request, provide an opportunity for a local administrative review to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

009.01J Result of Local Administrative Review

009.01J1 If, as a result of the local administrative review, the service agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.01J2 If, as a result of the local administrative review, the service agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the service agency shall inform the parent of the right to place in the records the service agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the service agency.

009.01J3 Any explanation placed in the records of the child must:

009.01J3a Be maintained by the service agency as part of the records of the child as long as the record or contested portion is maintained by the service agency; and

009.01J3b If the records of the child or the contested portion is disclosed by the service agency to any party, the explanation must also be disclosed to the party.

009.01K Consent for Release of Records

009.01K1 Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the service agency collecting or using the information unless specifically not required in the Family Education Rights and Privacy Act and its implementing regulations, 34 CFR Part 99.

009.01L Safeguards

009.01L1 Each service agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.01L2 One official at each service agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

009.01L3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

009.01L4 Each participating service agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the service agency who may have access to personally identifiable information.

009.01M Retention and Destruction of Information and Records

009.01M1 The service agency shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.01M2 The service agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.01M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

009.02 Procedural Timelines

009.02A For all students except for infants and toddlers, each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.02A1 The steps in the process which include referral, notice to parents (See 92 NAC 51-009.05), parental consent, and multidisciplinary team evaluation, shall be completed within a reasonable period of time. Prior to or at the time notice pursuant to 92 NAC 51-009.05 is given to the parent for conducting the MDT evaluation, the district shall inform the parent of the estimated amount of time necessary to complete the activity. If the activity takes longer than the amount of time estimated by the district, the district must communicate to the parent the progress being made at that stage of the educational planning process.

009.02A2 Upon completion of a multidisciplinary team verification decision, school districts shall provide a reasonable notification and conduct an individual education program conference within 30 calendar days. Parental consent for placement shall be requested within five school days of the IEP conference.

009.02A3 Special education placement shall be completed within five (5) school days of receipt of parental consent.

009.02B For infants and toddlers each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specific time periods.

009.02B1 A referral must be made by the school district to the agency responsible for providing services coordination in the Planning Region within two working days of the district becoming aware of an infant or toddler who may be eligible for services.

009.02B2 Notice to parents (See 92 NAC 51-009.05) and parental consent shall be completed within a reasonable period of time.

009.02B3 A multidisciplinary team evaluation must be completed within 45 calendar days from the date of referral. In the event of exceptional circumstances that make it impossible to complete the evaluation within the 45 days, the school district will document those circumstances, inform the parent of the time estimated by the district to complete the evaluation and develop and implement an interim IFSP as necessary.

008.003b4 Upon completion of a multidisciplinary team verification decision, and within 45 days of the referral, school districts shall participate in an individual family service plan conference.

008.003b5 Special education placement shall be completed within five school days of receipt of parental consent.

008.03 Notice

008.03A School districts shall provide a copy of the procedures specified in 60 NAC 51 for complaints and 60 NAC 56 for hearings to the parent of each child who is evaluated by the multidisciplinary evaluation team for possible initial verification.

008.03B Written notice shall be given to the parents of a child with a disability a reasonable time before a school district:

008.03B1 Proposes to initiate or change the identification, evaluation, verification or educational placement of a child or the provision of a free appropriate public education; or

008.03B2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

008.03C Such notice shall include:

008.03C1 A full explanation of procedural safeguards available to the parents under 34 CFR Part 300 Subpart E and the Handicapped Children's Protection Act of 1986 (20 USC§1415);

008.03C2 A description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and the description of any options the district considered and the reasons why those options were rejected;

008.03C3 A description of each evaluation procedure, test, record, or report the school district uses as a basis for the proposal or refusal; and

008.03C4 A description of any other factors which are relevant to the school district's proposal or refusal.

008.03D The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.

008.03E If the native language or other mode of communication of the parents is not a written language, the school district shall take steps to insure:

008.03E1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;

008.03E2 That the parents understand the content of the notice; and

008.03E3 That there is written evidence that the requirements of this section have been met.

008.04 Parental Consent

008.04A Parental consent must be obtained by a school district before:

008.04A1 Conducting an initial multidisciplinary evaluation; and

008.04A2 Initial placement of a child with disabilities in a program providing special education and related services.

008.04B Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

008.04C Parental consent for reevaluation is not required. However, written prior notice must be provided.

008.05 Parental Refusal to Consent

008.05A If parents of a child refuse to consent to initial multidisciplinary evaluation or, except for infants and toddlers, initial placement in a program providing special education and related services, the school district may initiate a hearing authorized under the provisions of Neb. Rev. Stat. 79-5049 through 79-5054 and 92 NAC 55.

008.05B For infants and toddlers, if consent is not given, the school district shall make reasonable efforts to ensure that the parents:

008.05B1 are fully aware of the nature of the evaluation or the services that will be available; and

008.05B2 understand that the child will not be able to receive the evaluation or services unless consent is given.

008.05C The parents of an infant or toddler may determine that they, their child, or other family members will accept or decline any early intervention service, and may decline such a service after first accepting it, without jeopardizing other early intervention services.

008.05D If the hearing officer or any court hearing an appeal therefrom, upholds the school district and if the time for further appeal has expired, the school district may evaluate or initially place a child with a disability in a special education program and related services without parental consent and the school district may refuse to provide or pay for any further inappropriate educational program.

008.06 Appointment of Surrogates

008.06A Each school district shall insure that the rights of a child with a disability are protected by the appointment of a surrogate when:

008.06A1 No parent can be identified;

008.06A2 The school district, after reasonable efforts, cannot locate the parents; or

60.51(5)(c) The child is a ward of the state or court.

60.51(5)(c)a. In those instances when the parents of a ward of the state or court continue to exercise the educational rights listed in 60.1(4) or 60.1(5), the appointment of a surrogate is not required.

60.1(6) In order to qualify a surrogate must be a person who:

60.1(6)(a) Has no interest that conflicts with the interest of the child he or she represents;

60.1(6)(b) Has knowledge and skills that insure adequate representation of the child; and

60.1(6)(c) Is not an employee of a public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

60.1(7) The surrogate may represent the child in all matters relating to:

60.1(7)(a) The identification, evaluation, and educational placement of a child; and

60.1(7)(b) The provision of a free appropriate public education to the child.

60.1(8) The services of the surrogate parent shall be terminated when:

60.1(8)(a) The child is no longer eligible for a surrogate parent under 60.1(4).

60.1(8)(b) A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

60.1(8)(c) The surrogate parent fails to fulfill his or her duties as a surrogate parent.

60.1(9) Vacancy arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 60.1(4)"c".

60.1(10) The surrogate parent and the school district which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

60.1(11) Complaint Procedures.

60.1(11)a. Complaints regarding alleged violation of requirements set forth in Special Education Rules shall be submitted to the Department of Education, Special Education Office, in writing. The written, signed complaint must contain a detailed explanation of specific facts relating to the alleged violation. If the complaint can be determined to be related to violation of Special Education Rules, the following procedures will be carried out:

[redacted] Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Special Education Office official shall notify in writing each complainant and the service agency against which the violation has been alleged, that the complaint has been received. The written notification shall include a copy of the complaint and the substance of the alleged violation. The service agency shall have fourteen (14) calendar days to submit a written response.

[redacted] Special Education Office officials will investigate each complaint received from an individual or organization to determine whether there has been a failure to comply with these rules and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary.

[redacted] Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Special Education Office will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved. The Department of Education shall include notification of the right to request the U.S. Secretary of Education to review the final decision.

[redacted] If, as a result of extenuating circumstances the Department of Education Special Education Office is not able to complete the investigation within the sixty (60) calendar days, an extension period of forty-five (45) calendar days will be implemented. The Department of Education Special Education Office will notify the person filing the complaint and the service agency of the 45 days extension.

[redacted] If a determination there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the service agency to bring the service agency into compliance including technical assistance, negotiations and corrective actions. The notification shall also set forth a reasonable period of time to voluntarily comply.

[redacted] If the service agency does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 45 MAC 01.060.10.

[redacted] Special Education Appeals

[redacted] A parent, competent student of age of majority, or a school district may initiate a hearing on matters related to evaluation or educational placement of a child or the provision of a free appropriate public education in accordance with federal, through the procedures of 45 MAC 60.

[redacted] The school district shall inform the parent of any free or low-cost legal and other advocacy services available in the area if the parent requests the information or if the parent or the school district initiates a hearing under 45 MAC 60.

[redacted] Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

60-61-60 Parents involved in hearings shall be given the right to have their child who is the subject of the hearing present, and shall also be given the right to have the hearing open to the public.

60-61-70 When a petition for a hearing involves an application for initial admission to public school, the child, with the consent of the parent, must be placed in the public school program until the completion of all the proceedings.

61.0 Qualifications of Special Education Personnel for Program Approval and Reimbursement

61.0.01 Qualifications for Instructional Personnel in Programs for Children with Disabilities

61.0.01.0 Instructional personnel shall hold valid Nebraska Department of Education certification and be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multidisciplinary program if the instructional personnel have attended training approved by the Department of Education. This section does not apply to individuals providing translation.

61.0.01.0 When fully endorsed personnel are not available the individuals who fill the positions shall:

61.0.01.01 Hold valid Nebraska Department of Education certification;

61.0.01.02 Be approved for as long as a provisional endorsement is held, or for one year if not provisionally endorsed; and

61.0.01.03 School districts employing noncertificated persons shall maintain documentation of the efforts made to obtain personnel and the results.

61.0.01.0 The Department may waive the provisions of this section when specific endorsement criteria for certain assignments are not available or are in the process of development.

61.0.01.0 Appropriate endorsements for program approval and reimbursement shall include:

	Categorical Assignment	OHI Appropriate Endorsement
61.0.01.01	Adaptive Physical Education	Adaptive Physical Education
61.0.01.02	Autism	Severely/Multiple Handicapped Early Childhood, Handicapped Emotionally Handicapped Mentally Handicapped Behaviorally Disordered Early Childhood, Behaviorally Disordered Psychology Speech Pathology Learning Disabled Special Education Resource Teacher
61.0.01.03	Behavior Disorders	Behaviorally Disabled Psychology Early Childhood, Behaviorally Disordered Early Childhood, Handicapped Special Education Resource Teacher

	Categorical Assignment	NDE Approvable Endorsement
010.01D4	Deaf-Blind	Acoustically Handicapped, Visually Handicapped, Severely/Multihandicapped
010.01D5	Diagnostic Programs	School Psychologist, Psychological Assistant, Audiologist, Speech Pathologist, or any special education endorsement
010.01D6	Early Childhood Special Education in Home and Centerbased Programs	Early Childhood plus any special education endorsement, Preschool Handicapped
010.01D7	Hearing Impairments	Acoustically Handicapped, Hearing Impaired
010.01D8	Home (School Age) and Hospital (Birth to 21) Services	Any teaching endorsement
010.01D9	Home-School Liaison	Any Special Education Endorsement, Guidance and Counseling Endorsement
010.01D10	Mental Handicap: Mild	Educable Mentally Handicapped, Mildly/Moderately Handicapped, Special Education Resource Teacher
010.01D11	Mental Handicap: Moderate	Mentally Retarded, Trainable Mentally Retarded, Severely/Multihandicapped, Educable Mentally Handicapped, Mildly/Moderately Handicapped, Special Education Resource Teacher
010.01D12	Mental Handicap: Severe/Profound	Mentally Retarded, Trainable Mentally Retarded, Severely/Multihandicapped,
010.01D13	Multicategorical Programs	Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served
010.01D14	Multiple Disabilities	Severely/Multihandicapped

	Categorical Assignment	NDE Approvable Endorsement
010.01D15	Orthopedic Impairments	Orthopedically Handicapped, Mildly/Moderately Handicapped, Severely/Multihandicapped
010.01D16	Other Health Impairments	Any teaching endorsement
010.01D17	Program Supervision	Administrative and Supervisory certificate and at least one special education endorsement
010.01D18	Specific Learning Disabilities	Specific Learning Disabled, Mildly/Moderately Handicapped, Special Education Resource Teacher
010.01D19	Speech-Language Impairments	Speech Pathology
010.01D20	Substitute Teacher	Any teaching certificate
010.01D21	Traumatic Brain Injury	Severely/Multihandicapped, Mildly/Moderately Handicapped, Educable Mentally Handicapped, Behaviorally Impaired, Behaviorally Disordered, Emotionally Disturbed, Speech Pathology, Learning Disabled, Special Education Resource Teacher, Orthopedically Handicapped
010.01D22	Visual Impairment	Visually Handicapped
010.01D23	Vocational Adjustment or Work Study Coordinator or School Rehabilitation Counselor	Any special education endorsement, guidance and counseling, vocational special needs or diversified occupations endorsement, special services certificate for school rehabilitation counselor

010.02 Paraeducators and clerical staff shall be supervised by qualified special education personnel.

010.03 Personnel providing special education services who are not eligible for Department of Education certification and endorsement, shall be licensed by the appropriate State of Nebraska Board of Examiners.

010.04 Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.

010.03 Noncertified personnel employed in early childhood programs included in the December 1, 1978, Federal Child Count for Nebraska who were successfully employed in such programs for the equivalent of at least one school year between July 1, 1978, and July 1, 1979, and shall be thereafter approved for reimbursement within an approved program. Such personnel shall work under the supervision of personnel qualified under 92 NAC 51-010.01E06. The nature and scope of the supervisory relationship shall be documented in the records of the agency providing the program. To continue approval for funding, each agency employing such noncertified personnel must demonstrate that these individuals participate for at least 40 contact hours annually in training programs.

010.04 Comprehensive System of Personnel Development

Each school district or approved cooperative shall develop or participate in a regional effort to develop written procedures, updated annually, for a comprehensive system of personnel development which shall include:

010.04A A plan for assessing the endorsement deficiencies of special education staff and a report stating methods and progress being made on improvement of those deficiencies;

010.04B A plan for the development of a self-study committee composed of special and regular educators, parents and other educational personnel;

010.04C A plan for assessing inservice needs of special and regular educators, administrators, parents and other educational personnel;

010.04D A plan for developing and implementing an inservice training program based on the results of the needs assessment listing the inservice activities to be conducted, specific groups to be trained, and the budget; and

010.04E Documentation of the results of the needs assessment, inservice program agendas, and results of evaluations of inservice programs.

011 School District Budget and Reimbursement Process for School Age Programs

011.01 General Information

011.01A The special education budget of a school district, county superintendent, and approved cooperative shall be prepared on budget forms provided by the Department of Education.

011.01A1 The fiscal year for school age special education programs shall be September 1 to August 31.

011.01B The allowable and reimbursable costs for special education services are restricted to the following items, which shall be documented and are subject to audit.

011.01B1 Salaries of special education staff as per 92 NAC 51-015.01D.

011.01B2 School district or approved cooperative share of fringe benefits for the special education staff.

011.01B2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long-term disability and unemployment insurance.

011.01B3 Inservice costs directly related to the special education programs provided that:

011.01B3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving students with a disability and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

011.01B3b Allowable costs include: presenter fees and expenses; mileage, board and room of staff to attend inservice programs; costs of substitutes for staff attending inservice programs; cost of inservice programs which directly assist special and regular educators in providing appropriate programs for students with a verified disability in their classrooms; and costs of special education workshop attendance.

011.01B3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable reimbursable expense.

011.01B4 Travel costs incurred by the special education staff in delivering the special education programs.

011.01B5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education.

51.1.01.06 Costs of transporting students with a disability which are authorized under Neb. Rev. Stat. 79-1032 and 92 NAC 51-014 are budgeted and claimed separately.

51.1.01.07 Instructional equipment, supplies and publications necessary to aid the student in accomplishing the goals and objectives of the individual education program (IEP) are allowable reimbursable costs under 92 NAC 51. The equipment, supplies and publications shall be used by the student in association with the implementation of the student's IEP or evaluation. This shall also include equipment, supplies and publications used by staff when instructing a student with a verified disability; when evaluating a student who is suspected of having a disability; or when reevaluating a student with a verified disability. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of 92 NAC 51. This shall not include equipment, supplies and publications used by staff for administrative purposes. This shall not include personal equipment and supplies or life support equipment. When equipment is used for purposes other than for special education, the school district, county superintendent or approved cooperative shall only claim the applicable prorated portion for special education payment.

51.1.01.08 Those contracted special education services in which students with a disability are served by a service agency whose special education programs and rates have been approved by the Department of Education; and

51.1.01.09 Restricted capital outlay for minor building modifications to buildings constructed prior to June, 1977, and consistent with the provisions of the Architectural Barriers Act (42 USCS§4151, et. seq.). The requires prior written Department of Education approval. Written approval or denial will be provided within a reasonable period of time.

51.1.01.10 Costs of acquisition (purchase, lease, lease-purchase), renovation and operation of a mobile unit(s) (i.e., trailers, mobile homes, vans, or any combination thereof) used, or to be used, as mobile learning centers for delivery of special education services to any eligible students with a disability. Reimbursement shall be subject to approval by the State Department of Education and shall be based on allowable depreciation and reimbursement as per 92 NAC 51-014. Acquisition shall be restricted to situations in which the local school district has determined that delivery of services at the school which the student with a disability is attending for his/her regular education program, whether such school is public or nonpublic, is infeasible, inadvisable, inappropriate or otherwise unavailable or prohibited.

51.1.01.10a The maximum number of mobile units a school district or approved cooperative may purchase shall be based on the total enrollment of both public and nonpublic schools as per the following schedule:

51.1.01.10a(1) 1 to 15,000 total enrollment for the maximum purchase of one (1) mobile unit.

001.01D1(1)(a)(2) 15,001 to 20,000 total enrollment for the maximum purchase of two (2) mobile units;

001.01D1(1)(a)(3) 20,001 to 30,000 total enrollment for the maximum purchase of three (3) mobile units;

001.01D1(1)(a)(4) 30,001 to 40,000 total enrollment for the maximum purchase of four (4) mobile units;

001.01D1(1)(a)(5) 40,001 to 50,000 total enrollment for the maximum purchase of five (5) mobile units; and

001.01D1(1)(a)(6) All districts with an enrollment exceeding 50,001 for the maximum purchase of six (6) mobile units.

001.01D2 The adjusted average per pupil cost of the preceding year or a portion of that cost shall be calculated according to the following criteria:

001.01D2(1) For Level I special education support services the school district is considered to have expended its adjusted average per pupil cost for each student with a disability who participates in a special education support service(s) for an aggregate of not more than three hours per week.

001.01D2(2) For Level II special education classroom services in which a student with a disability participates more than an aggregate of three hours per week, the school district shall pay that portion of the adjusted average per pupil cost for that portion of the instructional time devoted to the special education activity.

001.01D2(3) For Level III special education contractual services the school district shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year to the agency providing the educational program for each student with a disability. In deriving allowable excess cost, the district shall deduct its adjusted average per pupil cost from the cost of the program contracted from the service agency.

001.01D3 Ward of the State or Court With a Disability

001.01D3a When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the pupil's resident school district, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Social Services under rules and regulations prescribed by the Department of Social Services. Any student who is a ward of the state or court who resides in a foster family

home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 is a resident of the district in which the foster family home or foster family is located and shall be included as part of the plan and budget and claimed in the final financial report of the school district or approved cooperative.

01.01C4 When a school district, county superintendent or approved cooperative provides or contracts for a summer school special education program for a student with a verified disability, the cost of such program will be considered for allowable excess cost reimbursement if the student's needs for such program can be verified by review of the IEP.

01.02 General Limitation in Budget Development

01.02A Only students with verified disabilities shall receive special education services. This shall include the initial evaluation of a student with a suspected disability, regardless of the outcome of the verification decision. (See 92 NAC 51-006.)

01.02B Age limits

01.02B1 School age plans and budgets shall be limited to those students with disabilities from age five to twenty-one.

01.02B2 A child is age five if that child has reached the age of five years or will reach such an age on or before October 15 of the current school year.

01.02B3 A school district, county superintendent or approved cooperative is eligible for reimbursement for a student's special education program until the end of the school year in which the student's twenty-first birthday occurs.

01.02C Administration and Supervision

01.02C1 Reimbursement for supervision of special education programs is allowable as a Level I expenditure for up to an amount not to exceed 5% of the school district's, county superintendent's or approved cooperative's allowable school age program costs, minus the cost of program supervision.

01.02C2 The cost of a superintendent or principal, hired for the purpose of supervising general education, shall not be included in allowable excess cost for special education.

01.02D Related services for a student with a verified disability are reimbursable if the services are listed in the IEP and are necessary for the achievement of educational goals as stated in the IEP.

01.02E Any program that provides residential care shall show the costs of such care separately from the costs of the education program. (See 92 NAC 53.)

01.00 Budget Development for Levels I, II, III

01.005 Level I Special Education Services

01.005.1 The expenditures for Level I and more than an aggregate of three hours per child per week special education support service programs shall be considered for allowable excess cost reimbursement under the following conditions:

01.005.1a The program costs claimed by the school district, county superintendent or approved cooperative were approved by the Department of Education;

01.005.1b The programs are owned and operated by the school district, county superintendent or approved cooperative and the claimed expenditures are within the allowable categories as listed in IDAPA 01.01.11; and

01.005.1c The reimbursement to a school district, county superintendent or approved cooperative contracting for level I support services shall be limited to the rates approved by the Department of Education.

01.005 Level II Special Education Services

01.005. The expenditures for Level II more than an aggregate of three hours per child per week special education services shall be considered for allowable excess cost reimbursement under the following conditions:

01.005.a The program costs claimed by the school district, county superintendent or approved cooperative were approved by the Department of Education;

01.005.b The school district or approved cooperative has documented and contributed the portion local or provided amount for a full day program of the adjusted average per pupil cost into the program; and

01.005.c The claimed expenditures are within the allowable categories as listed in IDAPA 01.01.11.

01.005 Level III Special Education Contracted Services

01.005.1 The school district, county superintendent or approved cooperative may contract for any or all special education programs with approved service agencies.

01.005.1a Those school districts, county superintendents or approved cooperatives contracting for services shall have the service agency specify the cost for each service being provided by the service agency. Reimbursement to such school districts, county superintendents or approved cooperatives shall be limited to the least approved rates and the amount of time such services were provided to students with certified disabilities.

92.51.09 Procedures for Plan and Budget Reports and Final Financial Reports

92.51.095 General Procedures

92.51.0951 Excess cost shall mean the difference between (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of students full time equivalency in the special education programs multiplied by the adjusted average per pupil cost of the resident school district of each student for the preceding year.

92.51.0952 Each K-12 school district shall determine both an elementary and secondary adjusted average per pupil cost.

92.51.09520 The elementary adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as elementary costs from the total elementary instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the total Elementary ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

92.51.09530 The secondary adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as secondary costs from the total secondary instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the Secondary ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

92.51.09540 Each Class I district shall subtract those eligible special education costs from the Total Instruction line of the district Annual Financial Report for the previous school year. The result shall be divided by Elementary ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

92.51.095 Plan and Budget Reports

92.51.0951 The Special Education Plan and Budget for the school district and for each district within an approved cooperative shall be approved by the district board of education prior to submission to the Department of Education. School district, county superintendent, and approved cooperative plans and budgets shall be postmarked or hand delivered to the Department of Education for review and approval on or before October 31 of each year.

92.51.09514 Each plan for the provision of special education programs shall include the following:

92.51.095141 A description of the types of services to be offered.

92.51.095142 The number of students receiving the services (see list next to last date).

92.1.2405.4(3) The service agencies and key resources services offered;

92.1.2405.4(4) A presentation of all expected expenditures by source of funds;

92.1.2405.4(5) A detailed description of the methodology to be used by the agency for evaluating the results of the programs and services being provided by each service group. The methodology shall permit program evaluation, including the relative cost and effectiveness of alternative forms and patterns of services;

92.1.2405.4(6) A description of the procedure used to ensure that students are placed in appropriate educational programs. Such procedures shall be reviewed for approval by the Department of Education;

92.1.2405.4(7) Assurances that duplicative tests and testing services or unnecessary tests will be implemented; and

92.1.2405.4(8) A sample of the written materials to be used to provide parents with specific information about compliance and appeal rights and procedures or a statement regarding the use of Department of Education-supplied materials.

92.1.2405 Supplementary amendments to any proposed plans and budgets previously approved by the State Board of Education shall be postmarked or hand delivered to the Department of Education on or before June 1 during the same school year and shall be subject to the same review and approval as the initial plans and budgets.

92.1.2406 Program Expenditures, Revisions and Instructions

92.1.2406.1 All school districts or approved cooperatives shall submit to the Department of Education, on the appropriate Department of Education form, a report of budget expenditures, variances and calculations projected for the next school year. The report of budget expenditures, variances and calculations shall be postmarked or hand delivered to the Department of Education on or before March 1 of each year. The report shall include:

92.1.2406.1.a A list of additional special education staff, their specific assignments and projected caseloads;

92.1.2406.1.b Justifications for the additional staff members; and

92.1.2406.1.c A report of all staff reductions.

92.1.2406.2 School districts or approved cooperatives which do not have proposed staff assignments, variances or calculations shall report such information to the Department of Education on or before March 1 of each school year.

05.1.04(3) The signature of the authorized officer of the school board or authorized official of an approved cooperative certifying that the report is accurate is required.

05.1.04(4) The State Board of Education shall approve, approve with modifications or disapprove school districts or approved cooperatives requests for authorized special education staff.

05.1.045 Final Financial Reports.

05.1.045.1 The Department of Education shall distribute school districts, county superintendents and approved cooperatives or special state-connected, shall monthly payment schedule the fifth and twentieth day of each month beginning in September or the basis of financial reports submitted or forms developed by the Department of Education which shall include the following:

05.1.045(a) Allowable expenditures for the preceding school fiscal year.

05.1.045(b) A list of all special education staff and dept. FTE.

05.1.045(c) Tuition received from contracts and other sources.

05.1.045(d) Signature of authorized official of the school board or authorized official of an approved cooperative certifying that the reported expenditures have been paid; and

05.1.045(e) A copy of the billings from the service agencies for contracted programs.

05.1.045.2 Each final financial report shall be postmarked or hand delivered to the Department of Education on or before October 15 of each year for the preceding school fiscal year.

05.1.045.3 If a school district, county superintendent or approved cooperative provided or caused any school age contract placement by the Department of Education, costs in excess of the appropriate school age budget shall not be reimbursed by the Department of Education.

05.1.045.4 If school district, county superintendent or approved cooperative participated in budgeted expenditures, shall be required to return to the Department of Education any amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

05.1.045.5 The Department of Education shall withhold any reimbursement provided under this title that remains in school district, county superintendent or approved cooperative which after that determination by the Department of Education received funds in excess of the determined allowable for the previous year. Payments which are withheld shall be in an amount that the amount of overpayment. The Department of Education shall maintain an accurate account and a record of any balance for such overpayments and the interest or which adjustments were made.

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[redacted]

[redacted]

6.5 [redacted]

6.5.1 [redacted]

6.5.1.1 [redacted]

6.5.1.2 [redacted]

6.5.2 [redacted]

6.5.2.1 [redacted]

6.5.2.2 [redacted]

6.5.2.2.1 [redacted]

6.5.2.2.1.a [redacted]

6.5.2.2.1.b [redacted]

6.5.2.2.1.c [redacted]

6.5.2.2.1.d [redacted]

6.5.2.2.1.e [redacted]

6.5.2.2.2 [redacted]

6.5.2.2.3 [redacted]

6.5.2.2.4 [redacted]

[redacted]

512.02(3) Supplementary amendments to any below age five final financial report previously approved by the Department of Education not to exceed the approved below age five plan and budget, may be submitted to the Department of Education for review and approval within two years of the original due date. Approved amendments may be submitted to the Legislature for consideration of a supplemental appropriation.

512.02(4) Allowable reimbursable costs incurred for children with disabilities below age five shall be considered as total excess cost. The Department of Education shall pay for one hundred percent of the approved costs of the program to the school district or approved cooperative as long as the funding for such programs comes from federal funds. If the federal funding is inadequate at any time to pay one hundred percent of the costs of such programs, the amount provided by the Department of Education shall be ninety percent of such costs.

512.02(5) School districts or approved cooperatives shall be afforded notice and opportunity for hearing pursuant to 92 NAC 51-004.15 prior to final action on an application for federal funds by the Department of Education if the final action involves reduction or denial of funding.

512.03 Allowable Costs

512.03A The allowable and reimbursable costs for ECSE services are restricted to the following items, which shall be documented and are subject to audit:

512.03A1 Salaries of special education staff as per 92 NAC 51-010.01D.

512.03A2 School district or approved cooperative share of fringe benefits for the special education staff.

512.03A2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability and unemployment insurance.

512.03A3 Inservice costs directly related to the special education programs, provided that:

512.03A3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with disabilities and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

512.03A3b Allowable costs include: presenter fees and expenses, mileage, board and room of staff to attend inservice programs, costs of substitutes for staff attending inservice programs, costs of inservice programs which directly assist regular educators in providing appropriate programs for children with verified disabilities in their classrooms, and costs of special education workshop attendance.

012.0560n Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable expense.

012.0561 Travel costs incurred by special education staff in delivering the special education programs.

012.0565 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education.

012.0566 Costs of transporting children with disabilities which are authorized under Neb. Rev. Stat. 79-1033 and 92 NAC 51-014 are budgeted and claimed separately.

012.0567 Instructional equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) or IFSP are allowable under 92 NAC 51. The equipment, supplies and publications shall be used by the child in association with the implementation of the child's IEP, IFSP or evaluation. This shall also include equipment, supplies and publications used by staff when instructing children with verified disabilities, when evaluating children who are suspected of having disabilities, or when reevaluating children with verified disabilities. This shall not include equipment, supplies and publications used by staff for administrative purposes. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of 92 NAC 51. This shall not include personal equipment and supplies or life support equipment and supplies. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

012.0568 Those contracted special education services in which children with disabilities are served by a service provider whose special education programs and rates have been approved by the Department of Education.

012.0569 Facility costs, limited to plant operations, maintenance, repairs, and lease costs. A total facility square footage cost may also be claimed for facilities owned by the school district that are being utilized for ECSE programs. When determining square footage costs, expenditures for facility improvements must be excluded.

012.0570 Utilities; and

012.0571 Downsized capital outlay for minor building modifications to buildings constructed prior to June, 1977 and consistent with the provisions of the Architectural Barriers Act (42 USC§4151, et. seq.). This requires prior written Department of Education approval. Written approval or denial will be provided within a reasonable period of time.

012.04 Program Cost Limitations

012.04A No new construction shall be considered for approval as specified in 92 NAC 51-012.03A11.

012.04B Reimbursement for supervision of early childhood special education programs is allowable as an expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable early childhood special education program costs, minus the cost of program supervision.

012.04C The cost of a superintendent or a principal, hired for the purpose of supervising general education, shall not be included in costs for below age five special education programs.

012.05 Special Considerations

012.05A When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the pupil's resident school district, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Social Services under rules and regulations prescribed by the Department of Social Services. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 is a resident of the district in which the foster family home or foster family is located and shall be included as part of the plan and budget and claimed in the final financial report of the school district or approved cooperative.

012.05B Related services for children with verified disabilities are reimbursable if the services are listed in the IEP or IFSP and are necessary for the achievement of educational or developmental goals as stated in the IEP or IFSP.

012.05C Payments to a school district or approved cooperative contracting for ECSE services shall be limited to rates approved by the Department of Education.

012.05D For penalty provisions for late submission of required forms see 92 NAC 51-011.04E2.

012.05E No reimbursement shall be made to a school district or approved cooperative whose special education plan and budget is postmarked or hand delivered to the Department of Education after June 1.

513 Contracted Programs

513.01 Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Department of Education provisionally approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remains with the resident school district.

513.02 The school district of residence shall be responsible for the development and maintenance of the IEP, and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents. Such arrangements may include meetings with the contracted program, the resident school district, and the parent. Meetings may occur within the district, at the contracted program site or another site if more appropriate. For infants and toddlers the school district of residence shall be responsible for meeting the requirements of 60 IDAPA 51.01.07 through 007.13.

513.02A The parent, the school district and a contracted program representative shall be involved in any decision about the IEP or IFSP.

513.02B The expenditures for special education contractual services shall be considered for payment of allowable costs under the following conditions:

513.02B1 The services claimed by the school district, approved cooperative, or county superintendent were provided by contracted programs whose services and rates) were provisionally approved by the Department of Education; and

513.02B2 The school district, approved cooperative or county superintendent has completed the plan and budget forms.

513.02C The school district, approved cooperative, or county superintendent will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Department of Education. Within the forty-five day grace period a school district, approved cooperative, or county superintendent is responsible for notifying the program of the application and approval requirements of the Department of Education, Special Education Office.

513.02C1 If the contracted program, other than a school district, approved cooperative, or county superintendent fails to submit an application within the forty-five (45) calendar day grace period, the school district, approved cooperative, or county superintendent is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following the expiration of the grace period. If the agency's application for approval is denied by the Department of Education, the school district, approved cooperative, or county superintendent is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following notification of the denial.

513.02C2 The cost of services provided by a contracted program which is not granted provisional approval by the Department of Education Special Education Office will not be re- imbursed.

51.6.6(d) The school district, approved cooperative, or county superintendent and the provisionally approved contracted program shall enter into a contract which shall include but need not be limited to:

51.6.6(d)(1) A description of the services to be provided;

51.6.6(d)(2) Names of children to be served;

51.6.6(d)(3) A cost schedule for the services; and

51.6.6(d)(4) Department of Education Special Education Office service code and agency code for the service(s) provided.

51.6.6(e) The school district, approved cooperative, or county superintendent shall have on file a signed copy of the contract.

51.6.6(f) The school district, approved cooperative, or county superintendent shall monitor the progress of those children for whom they have contracted. For each child contracted for services, the school district or county superintendent shall maintain within the school district or county superintendent's office all applicable records as follows: a record of all referral information, notice to parents, parent notice and consent for initial evaluation, multidisciplinary evaluation team report, notification of IEP or IFSP meeting, the individual education program, parent notice and consent for initial placement, notice of change of placement or program termination, notice of student reevaluation, and other supportive data. School districts may elect to enter into agreements with provisionally approved contracted programs for the proper maintenance and protection of personally identifiable data on handicapped children with disabilities.

51.6.6(g) The resident school district or in the case of a nonresident tuition student, the county superintendent shall be liable for the payment of the educational costs for the placement of a child in a program not operated by the school district only when:

51.6.6(g)(1) The school district or county superintendent initiated the placement; or

51.6.6(g)(2) The school district or county superintendent has agreed to the placement; or

51.6.6(g)(3) The school district or county superintendent a party to a decision under 46 NMC 60 which requires such placement and which has not been appealed by the school district; or

51.6.6(g)(4) The school district or county superintendent has been a party to litigation resulting in a court order requiring the placement.

51.6.7 Department of Education Provisionally Approved Service Provider Responsibility.

51.6.7(a) With the exception of inservice providers and consultants who provide special education training for parents and staff which directly assist in providing appropriate programs for students with certified disabilities, all service providers contracting with a school district, approved cooperative or county superintendent shall seek approval and obtain a provisionally approved rate, service code and agency code for such services.

01.6.04B Service providers who request reimbursable rates exceeding NDE established rates shall submit, on forms provided by the Department of Education, the following:

01.6.04B1 Personnel and their qualifications;

01.6.04B2 A cost schedule for services (for allowable costs, see 48 NAC 01-011 and 01-012);

01.6.04B3 A written description of services;

01.6.04B4 Separation of sectarian educational costs and non-sectarian educational costs, if applicable;

01.6.04B5 Separation of the cost of residential care costs from the cost of the educational program, if applicable;

01.6.04B6 Documentation of conformance with building codes and safety requirements, if applicable; and

01.6.04B7 Final report of expenditures, if applicable.

01.6.04C Service providers who request reimbursable rates at or below NDE established rates shall submit, on forms provided by the Department of Education, the following:

01.6.04C1 Personnel and their qualifications;

01.6.04C2 A cost schedule for services;

01.6.04C3 A written description of services; and

01.6.04C4 Documentation of conformance with building codes and safety requirements, if applicable.

01.6.05D Service providers must have on file a copy of the child's current IEP or IFSP.

01.6.05E If the possibility of contracting with a school district, approved cooperative, or county superintendent exists, service providers shall inform the school district, approved cooperative, or county superintendent of the child's entry into the facility within five (5) calendar days of arrival.

01.6.05F Service providers shall provide reasonable notice to the resident school district, approved cooperative, or county superintendent prior to termination of services by the provider.

01.6.05G Service providers shall not be considered provisionally approved until the State Board of Education grants such approval.

01.6.05H Service providers shall be considered for provisional approval annually.

01.6.05I Service providers are required to submit all necessary forms prior to May 15 of each year.

XX.XX.XXJ When residential care is required for a child to attend an education program, the education program must be approved by the Department of Education prior to approval for residential care.

XX.XX.XXK Service providers shall fulfill the requirements for caseload and program variance requests, as specified in XX.XXC.XX.XXX.

31-31 Special Education Transportation

31-31-21. The board of education or county superintendent shall furnish one of the following types of services to the children with disabilities who are residents of the school district:

(1) Provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

(2) Provide transportation within the school district for any child with a disability who is enrolled in a special educational program of the district when either:

(a) The child is required to attend a facility other than that which would be the normal school of attendance of the child to receive appropriate special education services; or

(b) The nature of the child's disability is such that special education transportation is required.

(3) Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 49 CFR 31, 35, 36, and 391.

(4) The board of education shall provide transportation for all children with disabilities both in age five including children both in age five who are wards of the court.

31-31-22. Responsibility for Transportation

31-31-22(1). The board of education or county superintendent shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under State Rev. Stat. 46-40-01 to:

(1) Paying a parent for transporting his or her child for actual miles traveled and claimed; or

(2) Operating vehicles for the purpose of transporting children with disabilities; or

(3) Contracting for transportation services for children with disabilities; or

(4) Purchasing services from a common carrier; or

(5) Arranging for such other transportation as is proper and necessary to transport children with disabilities.

31-31-22(2). The board of education or county superintendent shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

31-31-22(3). The board of education or county superintendent shall not provide for the transportation expenses of children with or disability who are residents of the school districts under State Rev. Stat. 46-40-01 if such children are able to use regular transportation services provided by the district unless:

46-31-407.1 Alteration of the routes of such regular transportation is required to transport children with a disability; or

46-31-407.2 Alteration is required in the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.

46-31-408 The board of education or county superintendent shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled between the place of residence and the program of attendance when a parent transports his or her child/ward with a disability. (Refer to Neb. Rev. Stat. 79-1094 and 81-1174.)

46-31-09 Allowable Expenses

46-31-409 The school district board of education or county superintendent shall provide for the transportation expenses of children with a disability transported by the parents of such children upon receipt of claims submitted to the board of education by such parents. Such claims shall be documented and subject to audit. The claims shall:

46-31-409.1 State the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and

46-31-409.2 Contain a statement that the claim is a true and correct report of mileage; and

46-31-409.3 Bear the signature of the parent.

46-31-410 The school district board of education or county superintendent shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. An eligible child with a disability may be denied a free entitlement placed on the child's receipt of special education services required by an IEP or FSP as a result of the inability or unwillingness of parents to provide transportation.

46-31-411 The school district board of education or county superintendent shall provide for the expenses or the equivalent costs for transportation from the child's legal residence (the position of the residence or dependency of Education) approved residential place shown in the child's program.

46-31-412 A school district board of education or County superintendent may apply to the Department of Social Services for reimbursement of transportation costs for the school-age children who may reside in each of the state or court-ordered in his or her private in that school district.

46-31-413 When the school district board of education or county superintendent provides for transportation expenses under Neb. Rev. Stat. 79-1094 for children with a disability who are residents of the school district by utilizing vehicles operated by the school district, it shall include those transportation expenses before which are directly related to the vehicles used to transport special education children.

68-51-1607. Expenses and travel charges of drivers and necessary aides.

68-51-1608. Vehicle operational supplies.

68-51-1609. Vehicle repairs and maintenance.

68-51-1610. Vehicle lease costs.

68-51-1611. Vehicle insurance related to the transportation of children with a disability.

68-51-1612. Noninstructional administrative expenses of those engaged in employment for the purpose of supervising the transportation of children with a disability, their assistants, and clerical personnel but not including expenses for those engaged in general school or special education administration.

68-51-1613. Such depreciation as is allowed in IRC 167 (f) (1) (A) of those units.

68-51-1614. Those expenses attributable to an allowance of rooms.

68-51-1615. Those expenses attributable to alterations in equipment of vehicles which must be depreciated; and

68-51-1615.5. Facility expenses relating to the maintenance of vehicles used for transporting children with a disability. Transportation facility expenses for purposes other than maintenance are not allowable reimbursable items. Maintenance includes such activities as repair, inspecting, greasing, fueling and inspecting vehicles for safety. If a facility is used for purposes other than maintenance of vehicles used to transport children with a disability, expenses must be fairly reasonably so that it is those costs attributable to the maintenance of special education vehicles are included.

68-51-1616. If revenue is derived from a transportation service provided under Title, this Title, the total such income shall be used to offset expenses listed above to the extent of such income.

68-51-1617. The Department of Education shall allow a per mile cost for providing services by using the categories of allowable expenses in IRC 167 (f) (1) (A) divided by the annual mileage the vehicle was driven for pupil travel. The procedures may be used in lieu of IRC 167 (f) (1) (A).

68-51-1618. The costs used must be substantiated documented by the school district to review by the Department of Education.

68-51-1619. Detailed mileage logs must be maintained by the school district and be available for review by the Department of Education.

68-51-1620. Undocumented expenses or mileage will not be allowed.

[illegible]

[illegible]

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6.03.4(B)(3) Where services are not displayed in 6.3 or each step recognizing need and details, such as the appropriate grading of the displayed instruments, [illegible] documentation shall be considered to be useful when [illegible] [illegible] [illegible]

[illegible]

[illegible] All transportation claims shall be documented and are subject to audit.

[illegible] Reimbursement for costs associated with the transportation of trainees and the instructor with a disability will be based on the most economical method from the Alternative Departments of Workforce Development Offices.

[illegible] Supplementary amendments to your Training Education Transportation Plan must be submitted previously approved by the Department of Workforce and to provide the approval. Unapproved expenditures may be submitted to the Department of Workforce for review and approval within two weeks of the original date after approval amendments may be submitted to the Department of Workforce in the negotiations for reimbursement of a supplemental appropriations.

[illegible] The amount reimbursed to the negotiations for reimbursement for special circumstances, expenses under the full range of reimbursement. Personal particulars of [illegible] [illegible] to travel under a valid one to [illegible] persons [illegible] [illegible] to approved transportation.